



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Duval County, Texas**

**FY 2016 - FY2017 Indigent Defense Expenses**

**Final Report**

**June 13, 2019**

# Table of Contents

EXECUTIVE SUMMARY .....	3
DETAILED REPORT .....	4
BACKGROUND INFORMATION .....	4
County Background .....	4
Commission Background.....	4
Formula Grant.....	4
Discretionary Grant.....	4
DETAILED FINDINGS AND RECOMMENDATIONS .....	5
APPENDICES .....	9
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT.....	10
APPENDIX B – CRITERIA.....	12
APPENDIX C – DISTRIBUTION LIST .....	13

## EXECUTIVE SUMMARY

TIDC conducted a fiscal desk monitoring review of Duval County which began on October 19, 2017. Follow-up email exchanges continued through August 1, 2018 to complete the record review. TIDC reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants.

TIDC reviewed the expenditure periods of October 1, 2015 to September 30, 2016 (FY2016) and October 1, 2016 through September 30, 2017 (FY2017).

### SUMMARY OF FINDINGS

- General court expenditures were included with the criminal indigent defense expenses in the FY2016 Indigent Defense Expenditure Report (IDER) submitted under Texas Government Code Section §79.036 (e).
- 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 Procedure (CCP).
- Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present on vouchers as required by CCP Article 26.05(c).
- Records are not maintained to verify attorney qualifications to receive appointments.

### OBJECTIVE

The objectives of this review were to

- Determine the accuracy of the Indigent Defense Expenditure Reports (IDER);
- Determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grants;
- Validate fiscal 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 FY2016 and FY2017. The Duval County auditor's office provided the records reviewed. Compliance with other statutory indigent defense program requirements was not included in this review.

### METHODOLOGY

To accomplish the objectives, TIDC examined information provided by the County Auditor's office. The fiscal monitor reviewed

- Random samples of paid attorney fee vouchers;
- General ledger transactions;
- IDER;
- Attorney fee schedule;
- 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 filed with TIDC.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Duval County was founded in 1858 and organized in 1876. Duval County is in south Texas and is named after Burr H. Duval, a Texian soldier who died in the Goliad Massacre. The county seat is San Diego. Duval County serves an estimated population of 11,078 and occupies an area of 1,796 square miles, of which 2.1 square miles is water. The neighboring counties are Brooks, Jim Hogg, Jim Wells, Live Oak, McMullen and Webb. The county is served by the 229<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 both the FY2016 and FY2017 online formula grant applications to assist in the provision of indigent defense services. Duval County met the formula grant eligibility requirements and was awarded \$15,623 for FY2016 and \$18,632 for FY2017.

### Discretionary Grant

Duval County did not apply for a discretionary grant for FY2016 or FY2017; therefore, no discretionary grant funds were reviewed. TIDC currently supports Duval County's participation in the regional public defender program operated by Texas Rio Grande Legal Aid through a grant to Starr County, which subsidizes the services provided to Starr, Duval and Jim Hogg Counties.

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

Duval County included general court expenditures with criminal indigent defense expenses in the FY2016 IDER submitted under Texas Government Code Section §79.036 (e).

Duval County reported \$3,006 in categories other than the attorney fee category on the FY2016 IDER. These expenditures included six payments to Gerard Rickhoff, the Bexar County Clerk, in the amount of \$501 each. A review of one of these vouchers showed that the expense was for the “Bill of Costs” to the Bexar County Mental Health Department in response to an “Order of Protective Custody.”

The expenditures detailed above are not eligible indigent defense costs and 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. The FY2017 formula grant funding for Duval County may have been greater than would have been authorized if reported without the ineligible expenses.

### **Recommendation:**

Procedures must be developed to identify and separately record expenses unrelated to the defense of indigent defendants to ensure that they are not included in the IDER.

### **Duval County Action Plan**

- 1. Identify those in charge of submitting and approving payment for general court expenditures and criminal indigent defense expenses.*
- 2. Instruct and train those identified to ensure expenses unrelated to the defense of indigent defendants are not included in the Indigent Defense Expense Report (IDER).*
- 3. Regularly monitor these expense items and reports in order to separate and record proper expenses.*

### **Contact person:**

*Matthew Garza, Duval County Auditor  
(361) 279-6322*

*Matt.Garza@duvalao.net*

***Completion date for identifying those in charge and training: June 30, 2019.***

## **Finding Two**

Twenty of the 30 attorney fee vouchers reviewed for FY2016 and 25 attorney fee vouchers of the 27 reviewed for FY2017 did not appear to be paid in accordance with the published fee schedule as required by CCP Article 26.05(b).

Occasionally, the attorneys did not request a specific amount on their submitted vouchers, leaving it to the judges to authorize the amount to be paid. However, even in these situations, the amounts authorized did not correspond with the published fee schedule.

The published fee schedule indicates a flat rate of \$200 to \$300 will be paid for a case that is disposed with a guilty plea, plea of true or a dismissal by defendant. A flat rate of \$100 to \$200 will be paid for a case dismissed on a state's motion. For non-jury trials and contested hearings, the fee schedule indicates an hourly rate of \$60 to \$80 for in-court time and \$30 to \$60 for out-of-court time.

TIDC noted that for one felony case the County paid the attorney a total of \$50 for three hours worked, while other vouchers were approved to pay attorneys \$200 an hour. One appeal case showed that the attorney requested and received \$100 an hour for a total of \$12,000, which was both over the hourly rate and maximum amount set on the fee schedule. There does not appear to be any consistent hourly rate or flat rate fee authorized by judges or requested by attorneys, nor are the rates that are outlined in the published fee schedule followed.

### **Recommendation:**

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

It is a best practice for attorneys to request an amount to be paid on the voucher based on the published fee schedule.

### **Duval County Action Plan**

- 1. Review and possibly take action to update the currently published fee schedule.*
- 2. Coordinate training sessions regarding the fee schedule and require court-appointed attorneys, auditor's staff, court and clerk staff, and judges receive such training and a copy of the currently published fee schedule.*
- 3. Ensure training includes knowledge of the rates, both hourly and flat.*

### **Contact persons:**

*Gilbert N. Saenz, Duval County Judge*

*361.279.6204*

*gsaenz@co.duval.tx.us; and*

Baldemar Garza, 229<sup>th</sup> Judicial District Judge  
956-716-4800 ext. 8208

[balde.garza@co.starr.tx.us](mailto:balde.garza@co.starr.tx.us)

**Completion date:** As appropriate; Annual training to begin by June 30, 2019, and update fee schedule by June 30, 2019

### **Finding Three**

Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present as required by CCP Article 26.05(c).

The CCP Article 26.05(c) reads in part, “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.”

Four vouchers from the 30 vouchers reviewed from FY2016 and four vouchers from the 27 vouchers reviewed for FY2017 showed that the judge approved an amount that varied from the amount requested by the attorney. The judge did not provide an explanation for the variance on any of these eight vouchers.

### **Recommendation:**

Judges must provide a written explanation for any variance in the amount requested and the amount approved by the attorney to comply with CCP 26.05 (c).

### **Duval County Action Plan**

*Ensure both county and district judges explain any variances on the voucher in writing, and include periodic training regarding this subject for judges and all responsible staff.*

### **Contact persons:**

*Gilbert N. Saenz, Duval County Judge  
361.279.6204*

*gsaenz@co.duval.tx.us; and*

*Baldemar Garza, 229<sup>th</sup> Judicial District Judge  
956-716-4800 ext. 8208*

*balde.garza@co.starr.tx.us*

**Completion date:** As appropriate, and annual training to begin by June 30, 2019

## **Finding Four**

The County paid attorneys in FY2016 and FY2017 for indigent defense representation without current validation of eligibility of those attorneys; therefore, Duval County may have paid attorneys when they were not eligible to receive payments.

The County did not maintain attorney applications or provide supporting documentation that attorneys were current on their annual continuing legal education (CLE) requirements.

CCP Article 26.04 outlines procedures for appointing counsel and Title 1, Texas Administrative Code (TAC) rule §174 outline the minimum CLE requirements. Both rules are included in Duval County's indigent defense plans approved by the judges. The County did not maintain the supporting documentation to show that these procedures were followed. While these appointments potentially could have been made in accordance with TAC Rule §174.4 (Emergency Appointment), there were no records maintained to indicate that.

### **Recommendation:**

The County must implement procedures to verify that all attorneys included on the appointment list are eligible to receive appointments for indigent defense. 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 is on the list and meets requirements.

### **Duval County Action Plan**

1. *Require completed applications and supporting documentation from each attorney on the court-appointed representation list.*
2. *Include training on this subject to all attorneys on the list, ensuring it is understood that this documentation is mandatory.*
3. *Coordinate training for court and clerk staff and auditor's staff regarding application intake, records maintenance, and to verify that each attorney on the list meets requirements.*

#### **Contact person:**

*Matthew Garza, Duval County Auditor  
(361) 279-6322*

*Matt.Garza@duvalao.net; and*

*Gilbert N. Saenz, Duval County Judge  
361.279.6204*

*gsaenz@co.duval.tx.us*

**Completion date:** *As appropriate, and annual training to begin by June 30, 2019*

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>DUVAL COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Population Estimate	11,323	11,328	11,078
Juvenile Assigned Counsel	\$6,275	\$6,400	\$2,850
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$90,715	\$101,650	\$72,021
Adult Misdemeanor Assigned Counsel	\$4,850	\$8,950	\$1,000
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$4,450
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$0	\$0	\$0
Other Direct Litigation	\$0	\$3,006	\$0
Total Court Expenditures	\$101,840	\$120,006	\$80,321
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$12,390	\$2,051	\$41,216
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$114,230	\$122,057	\$121,537
Formula Grant Disbursement	\$15,474	\$15,623	\$18,632
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$12,390	\$7,234	\$9,710
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Assigned Counsel Cases	159	170	197

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Duval County</b>				
<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Texas 2017</b>
Population (Non-Census years are estimates)	11,323	11,328	11,078	28,059,337
Felony Charges Added (from OCA report)	170	197	129	279,474
Felony Cases Paid	113	110	129	212,428
% Felony Charges Defended with Appointed Counsel	66%	56%	100%	76%
Felony Trial Court-Attorney Fees	\$90,715	\$101,650	\$72,021	\$123,500,620
Total Felony Court Expenditures	\$90,715	\$101,650	\$72,021	\$141,042,744
Misdemeanor Charges Added (from OCA report)	291	238	223	473,896
Misdemeanor Cases Paid	21	34	58	217,002
% Misdemeanor Charges Defended with Appointed Counsel	7%	14%	26%	46%
Misdemeanor Trial Court Attorney Fees	\$4,850	\$8,950	\$1,000	\$43,271,420
Total Misdemeanor Court Expenditures	\$4,850	\$11,956	\$1,000	\$44,143,098
Juvenile Charges Added (from OCA report)	18	8	7	29,152
Juvenile Cases Paid	25	26	9	39,635
Juvenile Attorney Fees	\$6,275	\$6,400	\$2,850	\$11,386,741
Total Juvenile Expenditures	\$6,275	\$6,400	\$2,850	\$11,967,965
Total Attorney Fees	\$101,840	\$117,000	\$80,321	\$183,294,600
Total ID Expenditures	\$114,230	\$122,057	\$121,537	\$265,131,386
Increase in Total Expenditures over Baseline	562%	608%	605%	199%
Total ID Expenditures per Population	\$10.09	\$10.77	\$10.97	\$9.45
Commission Formula Grant Disbursement	\$15,474	\$15,623	\$18,632	\$31,751,772
Cost Recouped from Defendants	\$39,744	\$7,234	\$9,710	\$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
- FY2016 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/48321/fy16-ider-manual.pdf>
- FY2017 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/57810/fy17-ider-manual.pdf>

## APPENDIX C – DISTRIBUTION LIST

The Honorable Gilbert Saenz  
Constitutional County Judge  
Duval County  
P.O. Box 189  
San Diego, TX 78384  
[gsaenz@co.duval.tx.us](mailto:gsaenz@co.duval.tx.us)

Honorable Baldemar Garza  
Local Administrative District Judge  
229<sup>th</sup> Judicial District Judge  
P.O. Box 861  
401 N. Britton Ave., 2<sup>nd</sup> Floor  
Rio Grande City, TX 78582  
[balde.garza@co.starr.tx.us](mailto:balde.garza@co.starr.tx.us)

Mr. Matthew Garza  
County Auditor  
P.O. Box 1062  
San Diego, TX 78384  
[Matt.Garza@duvalao.net](mailto:Matt.Garza@duvalao.net)

Ms. Pamela M Garza  
Indigent Defense Coordinator  
P.O. Box 189  
San Diego, TX 78384  
[pgarza@co.duval.tx.us](mailto:pgarza@co.duval.tx.us)

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

Mr. Wesley Shackelford  
Deputy Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Edwin Colfax  
Grants Program Manager, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701