



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Fort Bend County, Texas

FY 2018 Indigent Defense Expenses

Final Report

October 25, 2019

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Fort Bend County on February 21-22, 2019. 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, 2017 through September 30, 2018 (FY 2018).

SUMMARY OF FINDINGS

- General court expenditures were included with the criminal indigent defense expenses in the FY 2018 Indigent Defense Expense 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).

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 FY2018. The records reviewed were provided by the Fort Bend 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 two assistant county auditors and the chief of the public defender's office. The fiscal monitor reviewed

- Random samples of paid attorney fees;
- General ledger transactions provided by the Fort Bend County auditor's office;
- IDER;
- Attorney fee schedule;
- Public defenders' case total records; and
- The County's local indigent defense plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

In 1822, a group of Stephen F. Austin's colonists headed by William Travis built a fort (blockhouse) at the present site of Richmond. The fort was called "Fort Bend" since it was built in the bend of the Brazos River. The city of Richmond was incorporated under the Republic of Texas along with 19 other towns in 1837. In 1838 Fort Bend County was created from parts of Austin, Harris, and Brazoria Counties.

Fort Bend County serves an estimated population of 775,945 and is rapidly growing. This estimate is up from 585,375 from the 2010 census. Fort Bend County occupies an area of 885 square miles, of which 24 square miles is water. The neighboring counties are Austin, Brazoria, Harris, Waller and Wharton.

Fort Bend County is served by the 240th, 268th, 400th, 434th, and 458th District Courts and County Courts-at-Law #1-5.

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 (TIDC) effective September 1, 2011. TIDC 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 2018 indigent defense online grant application to assist in the provision of indigent defense services. Fort Bend County met the formula grant eligibility requirements and was awarded \$567,772. Additionally, Fort Bend County received \$26,489 in supplemental capital defense grant funding and \$331,728 for the third year of a multiyear discretionary grant to operate a public defender office.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Fort Bend County included some general court expenditures with the criminal indigent defense expenses in the FY 2018 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.

Sixteen vouchers from the three categories other than attorney fees were reviewed. Of these, five were for mental health evaluations. One voucher had an *ex parte* motion for the psychologist to aid in the defense and is found to be eligible to report on the IDER. Of the remaining four, three were evaluations to test for competency to stand trial and one was for medical certificates. These four vouchers 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 IDER overstated the County's criminal indigent defense expenditures due to the inclusion of these ineligible costs. This could mean that the FY 2019 formula grant for Fort Bend 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/58006/fy18-ider-manual.pdf>.

Recommendation:

The County should develop procedures to identify and record expenses for mental health experts requested by and 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 expenditures.

The County must identify and report to TIDC the amount of the mental health costs included in the FY 2018 IDER that were not eligible based on the finding above.

County Response

The amount of mental health costs included in the FY 2018 IDER that were not eligible amounted to \$77,925. To prevent this error in the future, the County will implement new procedures to identify and record mental health experts requested by and for the exclusive use of defense counsel in preparation of a defense.

Fort Bend County Action Plan

Create an updated procedure document for County employees involved in processing indigent invoices. The document will outline steps to follow to identify and properly categorize indigent defense expenditures. Once completed the document will be distributed and training provided to ensure it is correctly implemented.

Contact person: *Robert E. Sturdivant*

Completion date: *10/1/2019*

Finding Two

Four of the 84 attorney fee vouchers reviewed for FY2018 did not appear to be paid in accordance with the published fee schedule as required by CCP Article 26.05(b).

The published fee schedule indicates an hourly rate of \$100 to \$200 will be paid for felony level cases.

TIDC noted that three cases from the 268th district court were paid at rates below \$100. One case from the 240th district court was paid at a rate of \$28.07 per hour. For the 268th District Court vouchers, it appears that amounts were rounded to the nearest \$100, and when the amount was rounded downward the hourly rate dropped below the minimum. The voucher from the 240th District Court appears to be an error, as the voucher included both a page subtotal for hours worked and a voucher total, and it appears that the page subtotal was used to calculate the amount to pay.

Recommendation:

Procedures should be developed to verify that the approved rate of pay for each voucher is within parameters of the published fee schedule to meet 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. When amounts approved deviate from the billed amounts, the judge must document the reason.

County Response

Based on past invoices the judge of the 240th disallowed some of the hours itemized on the voucher with no notation describing the exclusion. The judge of the 268th rounded invoices which caused the hourly rate to fall below the hourly rate range.

Fort Bend County Action Plan

The redesign and standardization of attorney expense claim forms is currently in process and will address the best practices outlined in the recommendation. In addition, as part of the implementation of the new electronic document management system, a 2-workflow verification will be programmed to notify Judges when the total paid falls below the minimum hourly rate on the fee schedule. The fee schedules will be reviewed by 11/30/2019 for the felony and misdemeanor caseloads to ensure they are set properly with respect to the hourly rates approved by the Judiciary

Contact person: *Robert E. Sturdivant*

Completion date: 10/1/2020

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

FORT BEND COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2016	2017	2018
Population Estimate	732,167	758,287	775,945
Juvenile Assigned Counsel	\$364,844	\$383,727	\$494,852
Capital Murder	\$56,265	\$41,156	\$192,407
Adult Non-Capital Felony Assigned Counsel	\$2,354,410	\$2,656,240	\$3,028,392
Adult Misdemeanor Assigned Counsel	\$1,946,355	\$1,682,826	\$1,605,815
Juvenile Appeals	\$0	\$1,500	\$900
Adult Felony Appeals	\$155,331	\$156,140	\$98,572
Adult Misdemeanor Appeals	\$10,288	\$0	\$8,694
Licensed Investigation	\$111,241	\$104,214	\$66,346
Expert Witness	\$227,277	\$314,719	\$241,570
Other Direct Litigation	\$73,678	\$183,609	\$207,369
Total Court Expenditures	\$5,299,690	\$5,524,131	\$5,944,916
Administrative Expenditures	\$217,671	\$218,324	\$222,972
Funds Paid by Participating County to Regional Program	N/A	N/A	N/A
Total Public Defender Expenditures	\$1,591,657	\$1,792,786	\$1,891,944
Total Court and Administrative Expenditures	\$7,109,018	\$7,534,786	\$8,059,833
Formula Grant Disbursement	\$565,082	\$782,014	\$567,772
Reimbursement of Attorney Fees	\$62,783	\$58,968	\$39,936
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	453	932	1006
Total Assigned Counsel Cases	4701	4487	5085

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Fort Bend County

Year	2016	2017	2018	Texas 2018
Population (Non-Census years are estimates)	732,167	758,287	775,945	28,525,596
Felony Charges Added (from OCA report)	3,657	3,845	4,153	288,260
Felony Cases Paid	2,168	2,305	2,499	215,240
% Felony Charges Defended with Appointed Counsel	59%	60%	60%	75%
Felony Trial Court-Attorney Fees	\$2,410,675	\$2,697,396	\$3,220,798	\$127,990,245
Total Felony Court Expenditures	\$2,706,832	\$3,213,068	\$3,606,017	\$144,671,726
Misdemeanor Charges Added (from OCA report)	7,177	6,671	6,427	467,851
Misdemeanor Cases Paid	2,609	2,747	3,151	214,494
% Misdemeanor Charges Defended with Appointed Counsel	36%	41%	49%	46%
Misdemeanor Trial Court Attorney Fees	\$1,946,355	\$1,682,826	\$1,605,815	\$43,911,167
Total Misdemeanor Court Expenditures	\$1,961,239	\$1,697,953	\$1,614,309	\$44,786,546
Juvenile Charges Added (from OCA report)	703	748	767	28,970
Juvenile Cases Paid	344	343	428	41,578
Juvenile Attorney Fees	\$364,844	\$383,727	\$494,852	\$11,805,587
Total Juvenile Expenditures	\$398,369	\$424,330	\$544,890	\$12,312,690
Total Attorney Fees	\$4,887,493	\$4,921,589	\$5,429,631	\$189,152,540
Total ID Expenditures	\$7,109,018	\$7,534,786	\$8,059,833	\$276,229,545
Increase in Total Expenditures over Baseline	717%	766%	826%	211%
Total ID Expenditures per Population	\$9.71	\$9.94	\$10.39	\$9.84
Commission Formula Grant Disbursement	\$600,303	\$807,911	\$594,261	\$23,320,001
Cost Recouped from Defendants	\$62,783	\$58,968	\$39,936	\$10,281,678

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
- FY2018 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/58006/fy18-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

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