



**TEXAS INDIGENT DEFENSE  
COMMISSION**

**Limited Scope Fiscal Desk Review  
Report**

**Freestone County, Texas**

**FY 2018 Indigent Defense Expenses**

**Final Report**

**August 20, 2019**

## Limited Scope Fiscal Desk Review Report

<b>County Name:</b> Freestone County		
<b>County Judge:</b> Judge Linda K. Grant		<b>Date of Report:</b> 08/20/2019
<b>County Auditor:</b> Karen Craddock		<b>Fiscal Year under review:</b> FY 2018
<b>Contact Name:</b> Karen Craddock	<b>Contact Title:</b> County Auditor	<b>Contact Phone Number:</b> 903 389-3535
<b>TIDC Fiscal Analyst:</b> Debra Stewart		<b>TIDC Phone Number:</b> 512 936-7561

### Statutory Directive

The Texas Indigent Defense Commission (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."

### Objective

The objective of this review is to determine the accuracy of the Indigent Defense Expenditure Report (IDER).

### Scope

TIDC reviewed the County's indigent defense expenditures to ensure compliance with Section §79.036(e) of the Texas Government Code for FY2018. The records reviewed were provided by the Freestone County auditor's office. Compliance with other statutory indigent defense program requirements was not included in this review.

### Methodology

To accomplish the objective, the fiscal monitor reviewed:

- The general ledger transactions provided by the Freestone County auditor's office; and
- The County's FY2018 submitted IDER.

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### Findings

#### **Finding One**

Under Section §79.036(e) of the Texas Government Code, the county auditor or designated person 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 for indigent defense in each court and in each case in which appointed counsel are paid. Freestone County prepared and submitted the FY 2018 IDER in accordance with Texas Government Code Section §79.036(e); however, the reported amounts were not fully supported by the financial data provided.

TIDC noted that two payments to attorneys totaling \$1,372.50 were not reported on the IDER. One of these payments for \$500 was marked as “REJECT,” indicating that the prosecutor declined to charge the case. This payment was listed on a summary sheet as an “other” expenditure. The total amount on this summary spreadsheet reconciled to the general ledger; however, the amount reported for attorney fees on the IDER did not include this \$500.

The second payment not reported on the IDER was identified on the general ledger as capital litigation expenses along with multiple payments to the Regional Public Defender Office for Capital Cases (RPDO). At the end of the year, the auditor noted that the RPDO payments were incorrectly categorized to various accounts. To bypass the reclassification process, the auditor used the information from the RPDO vendor file to calculate the total amount paid to the RPDO and listed this amount as the “expert witness” expense for capital cases on the IDER. However, one payment for expenses associated with a capital appeal was paid to a different vendor, and thus not included in the RPDO vendor file. This payment was overlooked and not reported on the IDER.

#### **Finding Two**

Freestone County included some general court expenditures with the criminal indigent defense expenses on the FY 2018 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.

TIDC noted five payments on the general ledger, totaling \$3,400, described as “Jail eval.”

Mental health evaluations to assess competency to stand trial and mental health assessments ordered by magistrates to comply with Article 16.22 of the Texas Code of Criminal Procedure are not eligible indigent defense expenses and must not be reported on the IDER. 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*

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*parte* defense motion requesting funds for a mental health defense expert is generally sufficient to establish eligibility as an indigent defense expenditure.

It appears that the “Jail eval” expenditures should not be included in the criminal indigent defense expense report as the mental health evaluations were not identified as exclusively defense-related. 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 Freestone 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>.

### Recommendations

#### **Finding One**

The County should perform a reconciliation of the data from the general ledger to the data entered on the IDER prior to submission.

#### **Finding Two**

Freestone County should develop 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. Procedures must distinguish such expenses from examinations ordered by the court to determine competency to stand trial and other mental health assessments ordered by magistrates, which are considered general court expenses.

### County Response

#### **Freestone County Action Plan**

##### **Response for Finding One:**

*The payment in the amount of \$500.00 was not included on the IDER as I was not aware that since it was a reject that it should be included on the IDER. Auditor has an understanding that if the attorney is paid money it is counted on the report.*

*Auditor will reconcile auditor’s spreadsheet to the general ledger instead of obtaining the figures from the vendor record.*

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**Response for Finding Two:**

*We have created a line item outside of our indigent defense line items for those jail evaluations that are given to the inmates that are not directly ordered by the defense and for the defense only.*

**Contact person(s):** *County Auditor, Karen Craddock*

**Completion date:** *November 1, 2019*