



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Kendall County, Texas

FY 2017 Indigent Defense Expenses

Final Report

June 13, 2019

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EXECUTIVE SUMMARY

Kendall County's on-site fiscal monitoring visit was conducted June 19-21, 2018 and follow-up email exchanges continued through September 7, 2018 to complete the record review. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of Texas Indigent Defense Commission (TIDC) grants.

The expenditure period of October 1, 2016 to September 30, 2017 (FY2017) was reviewed during the fiscal monitoring visit.

SUMMARY OF FINDINGS

- The FY2017 Indigent Defense Expense Report (IDER) submitted in accordance with Texas Government Code Section 79.036(e) was not supported by the financial data provided.
- Attorney fee vouchers were not always used as outlined in the County's indigent defense plan or as required by Texas Code of Criminal Procedures (CCP) Article 26.05(c).
- Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers, as required by CCP Article 26.05(c), were not present on one voucher.

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

The County's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grants during FY2017. Records provided by the Kendall County auditor's office were reviewed. Compliance with other statutory indigent defense program requirements was not included in this review.

METHODOLOGY

To accomplish the objectives, the fiscal monitor met with the County Auditor and an Assistant County Auditor. The fiscal monitor reviewed:

- Random samples of paid attorney fees;
- General ledger transactions provided by the Kendall County Auditor's Office;
- IDER;
- Attorney fee schedule;
- Any applicable contracts; and
- The county's local indigent defense plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Kendall County was carved from Kerr and Blanco counties in 1862 after residents of Boerne and Sisterdale petitioned the legislature for a new county. The County is named after George Wilkins Kendall, a journalist and Mexican-American War correspondent. Kendall County is located on the Edwards Plateau and is part of the San Antonio-New Braunfels, TX Metropolitan Statistical Area. The county seat is Boerne. Kendall County serves an estimated population of 43,294 and occupies an area of 663 square miles, of which .6 square miles is water. Kendall County is bordered by Bandera, Bexar, Blanco, Comal, Kerr and Gillespie counties.

At the beginning of FY2017, the County was served by the 216th District Court and a Court at law court. Beginning on January 1, 2017 the county was served by the newly formed 451st District court which has concurrent jurisdiction with 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 the FY2017 indigent defense on-line grant application to assist in the provision of indigent defense services. Kendall County met the formula grant eligibility requirements and was awarded \$33,953 for FY2017.

Discretionary Grant

Kendall County did not apply for a discretionary grant for FY2017; therefore, no discretionary grant funds were reviewed.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

The FY2017 Indigent Defense Expense Report (IDER) submitted in accordance with Texas Government Code Section 79.036(e) was not supported by the financial data provided.

Under Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners court) must annually prepare and send indigent defense data to the Commission. This data is to include the total expenses for cases in which an attorney was appointed for an indigent defendant or indigent juvenile in each district court, county court, statutory county court, and appellate court on criminal matters. Since FY 2014, the financial data reports expanded to include attorney-level information. Section 79.036(a-1) of the Texas Government Code states, “Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j) (4), Code of Criminal Procedure.”

Kendall County prepared and submitted the FY 2017 Indigent Defense Expense Report (IDER) in accordance with Texas Government Code Section 79.036(e). However, TIDC noted that the amounts reported paid to attorneys in the attorney detail section of the report did not match the attorney fees reported on the court report. The reviewer initiated a reconciliation procedure of the financial data from the official county records to the IDER report. The general ledger provided did not support the amounts claimed on the IDER. It appears that fees paid to four separate attorneys were overstated and fees on an additional three cases were not reported. Additionally, all the eligible expenses for arraignment dockets were not included. Finally, fees for expert witness were included in attorney fees, therefore those amounts were not categorized properly.

Recommendation:

TIDC staff will provide a technical assistance letter to Kendall County that will outline the errors observed in the preparation of the FY2017 IDER using the data provided by the County. The County Auditor and appropriate staff must review this letter to understand the errors and create procedures to ensure that the IDER is prepared accurately.

Because the amounts reported on the IDER are part of the basis for Formula Grant awards, the FY 2018 Formula Grant for Kendall County was less than would have been authorized if reported with all the allowable expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual found at the following website, <http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>.

County Response:

Agree. The County Auditor's Office has reviewed the technical assistance letter that outlined the errors observed in the preparation of the FY2017 IDER. In the FY2017 IDER, Kendall County reported for three courts. The County Court at Law and the 216th District Court reported from October 1, 2016 - December 31, 2016 and the newly created 451st District Court reported from January 1, 2017 - September 30, 2017. The County Court at Law Judge became the 451st District Judge. This was the first and only time Kendall County had three courts.

Corrective Action Plan:

The County Auditor's Office has created a spreadsheet by attorney and reporting category per the IDER. This is reconciled to the fee vouchers and the general ledger by month. These changes will assist in the correct reporting of fees paid to each attorney. Attorney fee vouchers, requisitions and copies of checks are now filed separately and by category to help in the preparation of all future required IDER submissions.

Contact Person: Corinna Speer, Kendall County Auditor

Completion Date: February 18, 2019

Finding Two

Attorney fee vouchers were not always used as outlined in the County's indigent defense plan or as required by Texas Code of Criminal Procedures (CCP) Article 26.05(c).

CCP Article 26.04(a) requires courts to adopt and publish written countywide procedures for providing indigent defense services, commonly known as an indigent defense plan. As part of these procedures, judges must adopt an attorney fee voucher form consistent with CCP Article 26.05(c). Government Code Section 79.036 requires that these countywide procedures be provided to the Commission biennially. Kendall County adopted and submitted its indigent defense plan, which included an approved attorney fee voucher.

CCP Article 26.05(c) reads in part, "Each fee schedule... shall provide a form for the appointed counsel to itemize the types of services performed. 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."

Twenty one of the 58 attorney fee vouchers reviewed did not meet the statutory requirements of the CCP Article 26.05(c), because they were not attorney submitted fee vouchers, but rather "Order to Pay Attorney" forms signed by the judge. The "Order to Pay Attorney" form does not provide attorneys the opportunity to submit itemized vouchers or to request payment amounts that the judge may approve or disapprove, both of which are requirements of Article 26.05(c) of the Texas Code of Criminal Procedure. Additionally, this practice does not provide the level of detail the auditor needs to complete the IDER.

Recommendation:

To ensure compliance with CCP Article 26.05 (c), the County must require attorneys to submit the attorney fee voucher approved in the indigent defense plan.

County Response:

Agree. For the FY2017 IDER the County Court at Law Judge who became the 451st District Judge did not always require the attorneys to complete a fee voucher. These were paid and reported per the Judge as an "Order to Pay Attorney" The Judge stated that they were in his written plan. The 216th District Judge did require all attorneys to complete a fee voucher.

Action Plan:

The current 451st District Judge requires all attorneys to complete an itemized fee voucher to comply with CCP Article 26.05(c). These vouchers are reviewed and approved by the District Judge prior to being submitted to the County Auditor's Office for payment. Only attorney fee vouchers will be accepted to receive payment.

Contact Person: Corinna Speer, Kendall County Auditor

Completion Date: February 25, 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).

CCP Article 26.05(c) states, "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-eight approved payments were reviewed. Of 37 vouchers submitted by attorneys, it appears that the judge approved the attorney-requested amount on all but two vouchers. On one of these, the judge provided an explanation. However, the second voucher was paid \$475 less than the amount requested, but no explanation was provided.

Recommendation:

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

County Response:

Agree. The Judge in office during FY2017 did not always put an explanation when an attorney fee voucher was changed.

Action Plan:

The current 451st District Judge as of January 1, 2019 approves the attorney fee vouchers. Any changes made to the fee voucher is marked with an explanation to comply with CCP Article 26.05 (c). No attorney fee vouchers will be paid showing a variance without a written explanation by the District Judge.

Contact Person: *Corinna Speer, Kendall County Auditor*

Completion Date: *February 25, 2019*

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

KENDALL COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2015	2016	2017
Population Estimate	39,731	41,161	43,294
Juvenile Assigned Counsel	\$750	\$3,638	\$29,940
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$63,573	\$73,760	\$107,465
Adult Misdemeanor Assigned Counsel	\$12,560	\$11,800	\$10,427
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$1,226	\$0	\$0
Expert Witness	\$10,250	\$6,000	\$7,350
Other Direct Litigation	\$1,232	\$10,260	\$0
Total Court Expenditures	\$102,468	\$105,458	\$155,182
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$18,402	\$8,184	\$8,184
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$120,870	\$113,642	\$163,366
Formula Grant Disbursement	\$27,367	\$27,584	\$33,953
Reimbursement of Attorney Fees	\$8,562	\$14,674	\$10,695
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	\$0	\$0	\$0
Total Assigned Counsel Cases	196	197	324

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Kendall County				
Year	2015	2016	2017	Texas 2017
Population (Non-Census years are estimates)	39,731	41,161	43,294	28,059,337
Felony Charges Added (from OCA report)	192	302	359	279,474
Felony Cases Paid	110	105	227	212,428
% Felony Charges Defended with Appointed Counsel	57%	35%	63%	76%
Felony Trial Court-Attorney Fees	\$63,573	\$73,760	\$107,465	\$123,500,620
Total Felony Court Expenditures	\$76,282	\$90,020	\$107,465	\$141,042,744
Misdemeanor Charges Added (from OCA report)	691	874	892	473,896
Misdemeanor Cases Paid	81	84	80	217,002
% Misdemeanor Charges Defended with Appointed Counsel	12%	10%	9%	46%
Misdemeanor Trial Court Attorney Fees	\$12,560	\$11,800	\$10,427	\$43,271,420
Total Misdemeanor Court Expenditures	\$12,560	\$11,800	\$11,177	\$44,143,098
Juvenile Charges Added (from OCA report)	25	19	25	29,152
Juvenile Cases Paid	5	8	17	39,635
Juvenile Attorney Fees	\$750	\$3,638	\$29,940	\$11,386,741
Total Juvenile Expenditures	\$750	\$3,638	\$36,540	\$11,967,965
Total Attorney Fees	\$76,883	\$89,128	\$147,832	\$183,294,600
Total ID Expenditures	\$120,870	\$113,642	\$163,366	\$265,131,386
Increase in Total Expenditures over Baseline	121%	108%	199%	199%
Total ID Expenditures per Population	\$3.04	\$2.76	\$3.77	\$9.45
Commission Formula Grant Disbursement	\$27,367	\$27,584	\$33,953	\$31,751,772
Cost Recouped from Defendants	\$8,562	\$14,674	\$10,695	\$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
- FY2017 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/57810/fy17-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

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