



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Tarrant County, Texas**

**FY 2018/FY 2019 Indigent Defense Expenses**

**Final Report**

**August 6, 2020**

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# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Tarrant County on November 17-20, 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) and October 1, 2018 through September 30, 2019 (FY 2019).

## SUMMARY OF FINDINGS

The FY 2018 and FY 2019 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) included general court and civil case expenditures which are unallowable for this report.

### 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 and FY2019. The records reviewed were provided by the Tarrant 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 juvenile court coordinator. The fiscal monitor reviewed

- Random samples of paid attorney fees;
- General ledger transactions provided by the Tarrant 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

Tarrant County was one of 26 counties created out of the “Peters Colony,” which was the name of four empresario land grant contracts to settle North Texas. Tarrant County was established in 1849 and organized in 1850. The County was named for General Edward H. Tarrant of the Republic of Texas militia. The county seat is Fort Worth.

Tarrant County serves an estimated population of 2,049,127 and is the third most populous county in Texas. Tarrant County occupies an area of 902 square miles, of which 39 square miles is water. The neighboring counties are Dallas, Denton, Ellis, Johnson, Parker, and Wise.

Tarrant County is served by 7 District Courts, 4 Criminal District Courts, 10 County Criminal Courts, and a Magistrate 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 (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 and FY 2019 indigent defense online grant application to assist in the provision of indigent defense services. Tarrant County met the formula grant eligibility requirements and was awarded \$1,527,396 and \$1,527,396, respectively.

## DETAILED FINDINGS AND RECOMMENDATIONS

### 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. Tarrant County prepared and submitted the FY 2018 and FY 2019 Indigent Defense Expense Report (IDER) in accordance with Texas Government Code Section §79.036(e); however, the reported amounts were not supported by the financial data provided. Specifically, the County included some general court and civil case expenditures with the criminal indigent defense expenses in the FY 2018 & FY 2019 IDER submitted under Texas Government Code Section §79.036 (e).

A mental health evaluation to determine competency to stand trial is typically a general court expense. Mental health examinations that are considered indigent defense expenses are those requested by the defense counsel to assist in the preparation of a defense and where the results are privileged and 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 is necessary to include the expenditure on the IDER. While 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, evaluations of competency to stand trial are not eligible indigent defense expenditures regardless of the origin of the referral for the competency evaluation.

There were five psychological evaluation vouchers reviewed and none included an *ex parte* motion to identify it as an exclusive defense-related cost. Two vouchers referenced the referral source as an attorney, but the bill was forwarded to the judge. It is unclear if these two vouchers fit the “for the defense under derivative attorney-client privilege” requirement. The three remaining vouchers were marked as competency reports, with two billed to the judge and one billed to the juvenile probation department. These three vouchers appear to be general court expenditures. The auditor’s office confirmed that no consideration regarding the psychological evaluation vouchers being for exclusive use of the defense attorney is made when recording the cost. However, the county reports 95% of these cost on the IDER. Without a mechanism to identify whether the evaluation is performed to determine competency to stand trial or is requested exclusively for the defense, 95% appears to be too high of a percentage to be used as a reasonable estimate.

The vouchers for competency to stand trial reports are general court expenses and are not eligible to be included in the IDER. The IDER was overstated due to the inclusion of these ineligible costs.

Additionally, TIDC learned that the Family Drug Court (FDC) cases included in the juvenile court are part of a civil case program. Therefore, these costs should not be included on the IDER. Because this issue was noted after the FY2019 IDER was submitted but before it was certified

complete, Tarrant County was given the opportunity to correct the 2019 IDER. This amount for the FDC program was removed from the FY 2019 IDER.

The formula grant is calculated based on the reported IDER expenditures. The FY 2018 formula grant for Tarrant County was not calculated accurately based on eligible expenditures. Please refer to the Indigent Defense Expenditure Report Procedure Manual:

<http://www.tidc.texas.gov/media/58006/fy18-ider-manual.pdf>.

<http://www.tidc.texas.gov/media/58218/fy19-ider-manual.pdf>

### **Recommendation:**

The County must 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 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.

Attorney fees for the FDC cases should not be reported on future IDER's.

### **County Response**

*Tarrant County will report only mental health expert expenses provided solely for the purpose of the defense. Family Drug Court expenses will be excluded from the report as well. In order to determine the amount of the mental health costs included in the FY2018 IDER, over 1,000 invoices would need to be traced to the court cases. In light of the current pandemic, we are reporting to you the total amount reported for mental health costs in the amount of \$ 673,746.27 as the possible amount not eligible.*

### **Tarrant County Action Plan**

*In order to accurately report expenses for mental health experts in compliance with the Indigent Defense Expenditure Report (IDER) manual, the county will implement the following procedure. Mental health expert invoices where the service is provided solely for the use of the defense will be marked "Defense Only Expenses" by the Clerk of the Court. Any mental health expense invoices not labeled in this manner will be considered a general court expense by the Auditor's Office and will not be included in the expenditure report.*

**Contact person(s):** *J. Greg Shugart, Barbara Murphy, Laura Weist*

**Completion date:** *New process was communicated to the courts on July 14, 2020. The FY2020 IDER will only include mental health expert expenses clearly marked "Defense Only Expenses".*

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>TARRANT COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Population Estimate	1,995,921	2,049,127	2,049,127
Juvenile Assigned Counsel	\$571,866	\$637,027	\$652,781
Capital Murder	\$1,401,569	\$2,006,874	\$2,018,520
Adult Non-Capital Felony Assigned Counsel	\$9,452,125	\$10,222,031	\$11,807,962
Adult Misdemeanor Assigned Counsel	\$3,076,159	\$3,579,021	\$4,090,764
Juvenile Appeals	\$64,786	\$50,023	\$46,056
Adult Felony Appeals	\$588,914	\$697,574	\$590,842
Adult Misdemeanor Appeals	\$25,551	\$30,588	\$46,544
Licensed Investigation	\$382,894	\$456,968	\$477,608
Expert Witness	\$1,004,912	\$1,029,259	\$1,186,533
Other Direct Litigation	\$614,726	\$471,384	\$501,620
<b>Total Court Expenditures</b>	<b>\$17,183,502</b>	<b>\$19,180,750</b>	<b>\$21,419,230</b>
Administrative Expenditures	\$504,210	\$348,742	\$183,641
<b>Total Court and Administrative Expenditures</b>	<b>\$17,687,712</b>	<b>\$19,529,492</b>	<b>\$21,602,871</b>
Formula Grant Disbursement	\$2,027,261	\$1,471,974	\$1,527,396
Supplemental Formula Grant Disbursement	\$132,701	\$127,707	\$150,199
Reimbursement of Attorney Fees	\$939,190	\$696,086	\$485,827
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
<b>Total Assigned Counsel Cases</b>	<b>27,733</b>	<b>30,532</b>	<b>33,009</b>

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

## Tarrant County

Year	2016	2017	2018	Texas 2018
Population (Non-Census years are estimates)	1,971,711	1,995,921	2,049,127	28,525,596
Felony Charges Added (from OCA report)	17,228	17,509	20,343	288,260
Felony Cases Paid	12,695	12,767	13,977	215,240
% Felony Charges Defended with Appointed Counsel	74%	73%	69%	75%
Felony Trial Court-Attorney Fees	\$10,133,266	\$10,853,694	\$12,228,906	\$127,984,845
Total Felony Court Expenditures	\$11,302,774	\$12,512,478	\$13,498,101	\$144,666,326
Misdemeanor Charges Added (from OCA report)	29,240	29,820	32,835	467,851
Misdemeanor Cases Paid	13,026	12,932	14,453	214,494
% Misdemeanor Charges Defended with Appointed Counsel	45%	43%	44%	46%
Misdemeanor Trial Court Attorney Fees	\$3,013,359	\$3,076,159	\$3,579,021	\$43,916,567
Total Misdemeanor Court Expenditures	\$3,031,685	\$3,200,688	\$3,694,239	\$44,791,946
Juvenile Charges Added (from OCA report)	1,169	1,485	1,506	28,970
Juvenile Cases Paid	1,707	1,758	1,835	41,578
Juvenile Attorney Fees	\$490,273	\$571,865	\$637,027	\$11,805,587
Total Juvenile Expenditures	\$508,998	\$790,031	\$828,274	\$12,312,690
Total Attorney Fees	\$14,417,641	\$15,180,969	\$17,223,138	\$189,152,540
Total ID Expenditures	\$16,178,623	\$17,687,712	\$19,529,492	\$276,229,545
Increase in Total Expenditures over Baseline	182%	208%	240%	211%
Total ID Expenditures per Population	\$8.21	\$8.86	\$9.53	\$9.84
Commission Formula Grant Disbursement	\$1,764,666	\$2,159,962	\$1,599,681	\$23,320,001
Cost Recouped from Defendants	\$1,026,808	\$939,190	\$696,086	\$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>.
- FY2019 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/58218/fy19-ider-manual.pdf>

## APPENDIX C – DISTRIBUTION LIST

The Honorable B. Glen Whitley  
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100 E. Weatherford, Suite 501  
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[gwhitley@tarrantcounty.com](mailto:gwhitley@tarrantcounty.com)

The Honorable Jerome S. Hennigan  
Local Administrative District Judge  
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