



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**San Jacinto County, Texas**

**FY 2019 Indigent Defense Expenses**

**Final Report**

**April 26, 2021**

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## EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of San Jacinto County which began on April 15, 2020. Email exchanges continued until September 1, 2020. 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, 2018 through September 30, 2019 (FY 2019).

### SUMMARY OF FINDINGS

- The FY 2019 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided and included general court expenditures which are unallowable for this report.
- Attorney CLE hours are not maintained to verify attorney eligibility to receive appointments.
- 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 FY2019. The records reviewed were provided by the San Jacinto 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 coordinated emails with the county auditor.

The fiscal monitor reviewed

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

The Texas Legislature created San Jacinto County on August 13, 1870 when they took parts of Liberty, Montgomery, Polk, and Walker counties. The County was named in honor of the battle of San Jacinto which ended the Texas Revolution. The county seat is Coldspring.

San Jacinto County serves an estimated population of 29,507 and occupies an area of 628 square miles, of which 59 square miles is water. San Jacinto County is bordered by Liberty, Montgomery, Polk, Trinity, and Walker counties.

San Jacinto County is served by the 258<sup>th</sup> and 411<sup>th</sup> District courts and a constitutional 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 (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 2019 indigent defense online grant application to assist in the provision of indigent defense services. San Jacinto County met the formula grant eligibility requirements and was awarded \$22,414.

## DETAILED FINDINGS AND RECOMMENDATIONS

### Finding One

The amounts the County reported on the FY 2019 Indigent Defense Expenditure Report (IDER) were not supported by the financial data provided by the County.

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. San Jacinto County prepared and submitted the FY 2019 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 unallowable general court expenditures while excluding some eligible attorney fees.

The general ledger data for attorney fee expenses includes both criminal and civil cases. The amount on the ledger needs to be separated for the IDER reporting. After sorting criminal and civil expenditures, TIDC noted that attorney fees paid for unindicted cases were not included on the IDER. This omission resulted in understating the IDER by \$1,795. In reviewing of expert witness costs, TIDC found that one voucher was duplicated due to a change in the case number. This oversight caused an overstatement of \$3,000.

Additionally, the case count report is not accurate, because vouchers with multiple cases listed were reported as one case.

There were two psychological evaluation vouchers reviewed and neither included an *ex parte* motion to identify it as an eligible defense-related cost. However, one voucher was billed directly to the attorney, indicating that it could have been for the exclusive use by the defense, while the second voucher was billed to the judge, indicating the evaluation was a general court expenditure for a competency evaluation.

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 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.

The vouchers for competency to stand trial examinations 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.

Because the amounts reported on the IDER are part of the basis for formula grant awards, the FY 2020 formula grant for San Jacinto County was more than would have been authorized.

**Recommendation:**

The County should develop:

- Procedures to record criminal case attorney fees separate from civil case attorney fees;
- Procedures to verify that the amounts on the general ledger support the amounts reported on the IDER; and
- Procedures to identify eligible mental health expert fees for the defense and exclude costs for examinations to determine competency to stand trial.

**County Response**

**San Jacinto County Action Plan**

- *Steps have been implemented with the attorneys to submit cases separately on their invoices as to whether the case is civil (Child Protective Services cases, Attorney General Child Support Enforcement cases, and Juvenile cases) or criminal (misdemeanor and felonies).*
- *Auditor's office reviews each invoice approved by the Court to determine if such be civil or criminal and the amount.*
- *Auditor's office reviews fee request based on the Court's determination as to whether Mental Health expert fees for the defense and exclude costs for examination to determine competency to stand trial.*

**Contact person(s):** *Kimberly Wooley.*

**Completion date:** *to be completed by January 21, 2021.*

## **Finding Two**

Title 1, Texas Administrative Code (TAC) Rule §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, CCP may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC Rule §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides that an attorney is eligible if the attorney is board certified in criminal law or juvenile law.

The County could not document that attorneys assigned criminal cases had met the CLE requirements to be eligible for appointment. The County may have made ineligible payments to these attorneys. (TAC Rule §174.4 does allow for emergency appointment when no attorney meeting the CLE requirements is available.)

### **Recommendation:**

The County must implement a procedure to verify that all attorneys included on the current appointment list have met the current year’s CLE requirements.

### **County Response**

#### **San Jacinto County Action Plan**

*The Courts will send out letters asking all attorneys seeking court appointments to update their CLE transcript and show if they have 6 hours criminal CLE in last 12 months and 6 hours juvenile law in the last 12 months if the attorney wants to be appointed on juvenile cases.*

**Contact person(s):** *Ashley Garcia.*

**Completion date:** *to be completed by January 31, 2021.*

## **Finding Three**

Two of the 37 attorney fee vouchers reviewed for FY2019 did not appear to be paid in accordance with the published fee schedule as required by Criminal Code of Procedure (CCP) Article 26.05(b).

The published fee schedule indicates a Plan A and a Plan B. The attorney may choose to be paid under either plan. Plan A allows the attorney to be paid an hourly rate for in-court and out-of-court time. Plan B allows the attorney to be paid a flat rate based on both a specific procedure and if the defendant has a single case or multiple cases.

TIDC noted that on two vouchers the attorney requested and was paid both under Plan A and under Plan B in conflict with the fee schedule.

**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).

**County Response**

**San Jacinto County Action Plan**

*The Courts will review the vouchers closer to ensure that the amount approved is within parameter of the published fee schedule to meet requirements of CCP Article 26.05 (b).*

**Contact person(s):** *Kimberly Wooley.*

**Completion date:** *to be completed by January 21, 2021.*

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>SAN JACINTO COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Population Estimate	27,872	28,942	29,507
Juvenile Assigned Counsel	\$8,703	\$9,205	\$4,750
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$137,232	\$141,503	\$119,429
Adult Misdemeanor Assigned Counsel	\$7,411	\$12,313	\$9,095
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$6,216	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$4,071	\$0	\$0
Expert Witness	\$2,667	\$1,100	\$15,381
Other Direct Litigation	\$740	\$1,803	\$0
Total Court Expenditures	\$160,824	\$172,140	\$148,656
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
Total Public Defender Expenditures	NA	NA	NA
Total Court and Administrative Expenditures	\$160,824	\$172,140	\$148,656
Formula Grant Disbursement	\$29,514	\$22,136	\$22,414
Reimbursement of Attorney Fees	\$0	\$0	\$0
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	NA	NA	NA
Total Assigned Counsel Cases	291	345	281

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>San Jacinto County</b>				
<b>Year</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Texas 2019</b>
Population (Non-Census years are estimates)	27,872	28,942	29,507	28,901,062
Felony Charges Added (from OCA report)	413	482	438	295,010
Felony Cases Paid	249	294	242	222,860
% Felony Charges Defended with Appointed Counsel	60%	61%	55%	76%
Felony Trial Court-Attorney Fees	\$137,232	\$141,503	\$119,429	\$143,210,108
Total Felony Court Expenditures	\$143,970	\$141,503	\$134,811	\$160,275,769
Misdemeanor Charges Added (from OCA report)	412	428	462	450,080
Misdemeanor Cases Paid	17	24	24	209,641
% Misdemeanor Charges Defended with Appointed Counsel	4%	6%	5%	47%
Misdemeanor Trial Court Attorney Fees	\$7,411	\$12,313	\$9,095	\$47,236,136
Total Misdemeanor Court Expenditures	\$7,411	\$13,197	\$9,095	\$47,954,642
Juvenile Charges Added (from OCA report)	23	23	17	27,346
Juvenile Cases Paid	25	25	15	39,709
Juvenile Attorney Fees	\$8,703	\$9,205	\$4,750	\$10,795,227
Total Juvenile Expenditures	\$8,703	\$9,205	\$4,750	\$11,236,143
Total Attorney Fees	\$153,346	\$169,237	\$133,274	\$206,610,474
Total ID Expenditures	\$160,824	\$172,140	\$148,656	\$303,021,373
Increase in Total Expenditures over Baseline	181%	201%	160%	242%
Total ID Expenditures per Population	\$5.77	\$5.95	\$5.04	\$10.48
Commission Formula Grant Disbursement	\$29,514	\$22,136	\$22,414	\$23,290,906
Cost Recouped from Defendants	\$0	\$0	\$0	\$9,888,967

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
- FY2019 Indigent Defense Expenditure Report Manual found at:  
[www.tidc.texas.gov/documents/posts/2019/october/fy2019-indigent-defense-expenditure-report-manual/](http://www.tidc.texas.gov/documents/posts/2019/october/fy2019-indigent-defense-expenditure-report-manual/)

## APPENDIX C – DISTRIBUTION LIST

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San Jacinto County Judge  
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