



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Rusk County, Texas**

**FY 2018 Indigent Defense Expenses**

**Final Report**

**February 11, 2020**

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# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Rusk County on June 24-25, 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

The FY 2018 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided nor prepared in the manner required.

- General court expenditures were included with the criminal indigent defense expenses; and
- Attorney payments for drug court representation were not classified correctly.

Rusk County uses a contract defender system for a drug courts; however, the program does not comply with the contract defender rules outlined in the Texas Administrative Code (TAC), Chapter 174, Subchapter B.

Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present on vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedure.

## 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 Rusk 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, the County Auditor, and held a meeting with a team of County officials. The fiscal monitor reviewed

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

Rusk County was established by the Congress of the Republic of Texas on January 16, 1843. The County was named for Thomas Jefferson Rusk, a secretary of war of the Republic of Texas. The county seat is Henderson.

Rusk County serves an estimated population of 54,272. Rusk County occupies an area of 938 square miles, of which 14 square miles is water. The neighboring counties are Cherokee, Gregg, Harrison, Nacogdoches, Panola, Shelby, and Smith.

Rusk County is served by the 4<sup>th</sup> District Court, and a County Court-at-Law.

### 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. Rusk County met the formula grant eligibility requirements and was awarded \$32,665.

## 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. Rusk County prepared and submitted the FY 2018 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 expenditures with the criminal indigent defense expenses in the FY 2018 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. 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 is necessary 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.

None of the psychological evaluation vouchers reviewed included an *ex parte* motion to identify it as a defense-related cost.

These general court expenses are not eligible indigent defense expenditures and should not be included in the IDER. The IDER was overstated due to the inclusion of these ineligible costs.

Additionally, TIDC noted that the amounts for attorney fees reported for the drug court were classified as “other litigation expenditures” rather than attorney fees.

The formula grant is calculated based on the reported IDER expenditures. The FY 2019 formula grant for Rusk 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>.

### **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.

Contract attorney fees paid for representation in the drug court should be included as attorney fees on the IDER.

### **County Response**

*The amount of mental health costs included in the FY2018 IDER that were not ex parte totaled \$24,125.00.*

### **Rusk County Action Plan**

*In the future, only expenses related to ex parte motions for psychological evaluations shall be included in the IDER. The Court shall review such motions in order to make sure said motions are ex parte prior to inclusion.*

### **Contact person(s):**

*The contact person on this matter shall be county auditor, Ronald Moody and/or the appropriate judge.*

**Completion date:** *November 12, 2019*

### **Finding Two**

Rusk County uses a contract defender system for their drug court; however, the County is not in compliance with the contract defender rules outlined in the Texas Administrative Code (TAC), Chapter 174, Subchapter B.

For FY 2018, Rusk County reported \$5,600 on the IDER for a defense attorney in the drug court. There appears to be an agreed rate requested on vouchers for representation in this specialty drug court, however a formal contract has not been executed. The attorney submits a voucher that lists the date of each docket call, but does not provide the number of disposed cases, which the county auditor needs to complete the IDER.

### **Recommendation:**

To comply with TAC 174 Subchapter B, the County must have:

- An open notification process for the selection of the attorneys, per TAC 174.11;
- A contract with each attorney that includes the required elements detailed in TAC 174.15-174.25; and
- The attorneys must provide the number of disposed cases on the payment request voucher, per TAC 174.10 (5).

### **Rusk County Action Plan**

*Attorney fees or expenses associated with drug court will not be claimed on the IDER.*

**Contact person(s):** *The contact person on this matter shall be the county auditor, Ronald Moody.*

**Completion date:** *November 12, 2019*

### **Finding Three**

Written explanations from judges for variance in amounts approved and amounts requested on attorney fee vouchers were not present as required by Article 26.05(c) of the Texas Code of Criminal Procedure.

Article 26.05(c) of the Code of Criminal Procedure (CCP) reads in part, “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.”

Forty attorney fee vouchers were reviewed, and it appeared that the judges approved the amount requested by the attorney on all but seven vouchers. Of these seven vouchers, only one voucher included an explanation for the difference.

### **Recommendation:**

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

### **Rusk County Action Plan**

*Payments will be in accordance with the fee schedule. Any deviation shall be explained on the form.*

**Contact person(s):** *The contact person on this matter shall be the county auditor, Ronald Moody and/or the appropriate judge.*

**Completion date:** *November 12, 2019*

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>RUSK COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Population Estimate	54,084	53,826	54,272
Juvenile Assigned Counsel	\$7,408	\$5,380	\$6,113
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$116,156	\$111,190	\$103,243
Adult Misdemeanor Assigned Counsel	\$31,283	\$25,551	\$38,683
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$10,451	\$400	\$1,750
Expert Witness	\$1,275	\$0	\$3,000
Other Direct Litigation	\$46,369	\$27,057	\$35,688
<b>Total Court Expenditures</b>	<b>\$212,942</b>	<b>\$169,577</b>	<b>\$188,476</b>
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
<b>Total Public Defender Expenditures</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>Total Court and Administrative Expenditures</b>	<b>\$212,942</b>	<b>\$169,577</b>	<b>\$188,476</b>
Formula Grant Disbursement	\$36,842	\$47,012	\$32,665
Reimbursement of Attorney Fees	\$14,275	\$18,431	\$15,782
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
<b>Total Public Defender Cases</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>Total Assigned Counsel Cases</b>	<b>307</b>	<b>333</b>	<b>320</b>

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Rusk County</b>				
<b>Year</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>Texas 2018</b>
Population (Non-Census years are estimates)	54,085	53,826	54,272	28,525,596
Felony Charges Added (from OCA report)	402	379	402	288,260
Felony Cases Paid	204	235	201	215,240
% Felony Charges Defended with Appointed Counsel	51%	62%	50%	75%
Felony Trial Court-Attorney Fees	\$116,156	\$111,190	\$103,243	\$127,990,245
Total Felony Court Expenditures	\$174,251	\$136,197	\$140,881	\$144,671,726
Misdemeanor Charges Added (from OCA report)	824	969	1,128	467,851
Misdemeanor Cases Paid	83	81	100	214,494
% Misdemeanor Charges Defended with Appointed Counsel	10%	8%	9%	46%
Misdemeanor Trial Court Attorney Fees	\$31,283	\$25,551	\$38,683	\$43,911,167
Total Misdemeanor Court Expenditures	\$31,283	\$28,001	\$41,483	\$44,786,546
Juvenile Charges Added (from OCA report)	19	19	26	28,970
Juvenile Cases Paid	20	17	19	41,578
Juvenile Attorney Fees	\$7,408	\$5,380	\$6,113	\$11,805,587
Total Juvenile Expenditures	\$7,408	\$5,380	\$6,113	\$12,312,690
Total Attorney Fees	\$154,847	\$142,121	\$148,038	\$189,152,540
Total ID Expenditures	\$212,942	\$169,577	\$188,476	\$276,229,545
Increase in Total Expenditures over Baseline	259%	186%	217%	211%
Total ID Expenditures per Population	\$3.94	\$3.15	\$3.47	\$9.84
Commission Formula Grant Disbursement	\$36,842	\$47,012	\$32,665	\$23,320,001
Cost Recouped from Defendants	\$14,275	\$18,431	\$15,782	\$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

The Honorable Joel R. Hale  
Rusk County Judge  
115 N. Main  
Henderson, TX 75652  
[jhale@co.rusk.tx.us](mailto:jhale@co.rusk.tx.us)

The Honorable J. Clay Gossett  
Local Administrative District Judge  
4<sup>th</sup> District Court  
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The Honorable Chad Wes Dean  
Local Administrative Statutory County Court Judge  
County Court at Law  
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