



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Montgomery County, Texas

FY 2019 Indigent Defense Expenses

Final Report

November 18, 2021

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of Montgomery County beginning on April 22, 2020. Email exchanges continued until September 17, 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 prepared in the manner required. Specifically, case counts were not reported properly.

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 Montgomery 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 Montgomery 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

Montgomery County was created on December 14, 1837 by an act of the Congress of the Republic of Texas. The County was named after its largest settlement at the time, the town of Montgomery which was part of Stephen F. Austin's Second Colony. Montgomery County is part of the Houston-The Woodlands-Sugar Land, TX Metropolitan Statistical area. The County seat is Conroe.

Montgomery County serves an estimated population of 610,513 and occupies an area of 1,077 square miles, of which 35 square miles is water. Montgomery County is bordered by Grimes, Harris, Liberty, San Jacinto, Walker, and Waller counties.

Montgomery County is served by 8 district courts and 5 county court-at-law courts.

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's mission is to protect the right to counsel and improve indigent defense.

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. Montgomery County met the formula grant eligibility requirements and was awarded \$461,246 in formula grant award and \$31,432 in supplemental capital defense grant award.

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. Montgomery County prepared and submitted the FY 2019 IDER in accordance with Texas Government Code Section §79.036(e).

However, Montgomery County reported case counts for the felony contract attorney payments based on the number of cases appointed, not the number of cases disposed, which is the prescribed manner required by TIDC.

In July 2018, the Montgomery County auditor's office contacted TIDC regarding counting the cases under their new contract system. TIDC referred them to the FY2017 IDER manual and indicated that the case count should be based on disposed cases. TIDC tracks cases disposed in part because this metric best associates costs with case work completed rather than merely assigned. The manual included the following statement: "Contract systems must have a written policy instructing contract attorneys when cases will be counted on the invoice submitted each month (examples: disposition by court; when judgment is filed; at time of brief or at appeals court disposition, etc.....)." Montgomery County staff interpreted this line in the instructions to grant the county discretion on how they want the attorney to count the cases; however, the line is in reference to when the court considers the case officially disposed. Due to software constraints, Montgomery County staff chose to count the cases when appointed.

Additionally, the contract to provide juvenile representation covers three separate attorneys, both individually and through their respective law office. However, the number of juvenile cases handled under the contract were reported as paid to just one of the attorneys named in the contract. Each attorney under the contract should submit a voucher for the cases he or she disposed for the period billed, and the case numbers should be reported under each attorney's name on the attorney detail section of the IDER.

Because the reported felony case counts were based on appointments rather than dispositions, and because juvenile appointments under the juvenile contract were reported under a single attorney instead of the several attorneys providing representation under the contract, the report was not completed according to the manner prescribed by TIDC, Montgomery County is not in compliance with Texas Government Code Section §79.036(e).

Recommendation

The County should develop a procedure to track the number of cases disposed by attorney on contract attorney vouchers in order to capture data required on the IDER. The County should also ensure the contract attorneys for the juvenile contract each submit a voucher for the cases they dispose each period billed.

County Response

Montgomery County sought guidance from TIDC regarding counting felony cases under our new contract system and received the following information:

“Initially, my thought was to tell you that the attorneys should only record the cases that are disposed for the bi-weekly period on their voucher and not all the cases they worked on. I went to look at the manual to give you a reference tools and it actually says that a written policy is to be provided to instruct the attorney when the cases should be reported, so it may not be at the time of disposition it could be at another designated time. Please see the bottom paragraph on page 10 and the top paragraph on page 11 of our IDER manual that you can find at <http://www.tidc.texas.gov/media/57810/fy17-ider-manual.pdf>.”

Based on the interpretation that was provided, the County reported the contract cases when they were appointed rather than when they were disposed. Although cases were reported at the time of appointment and not disposition, the County was diligent in making sure the case was only counted once. The County was made aware in July 2020 that this interpretation was incorrect. The County has since changed its procedures and only reports cases once they are disposed.

Montgomery County Action Plan

Montgomery County will continue to focus on controls that were put in place in July 2020 to ensure that only disposed felony cases are counted and reported.

Contact person(s): Montgomery County Auditor- Amanda Vance (936) 539-7820
Completion date: Completed July 2020

County Response

Montgomery County reported all juvenile cases to one attorney named on the juvenile contract. The contract names three attorneys, but payments are made directly to William Pattillo. Therefore, all cases were reported under William Pattillo. The County now understands that although William Pattillo is the payee, there are three attorneys on the contract who manage the cases. Therefore, cases should be reported amongst the three of them.

Montgomery County Action Plan

Montgomery County has implemented a new procedure in which Indigent Defense will rotate appointments amongst the three contract attorneys. The Juvenile Contract vendor has been instructed to include a list of the disposed cases along with the attorney that was appointed to each case with their monthly invoice. Montgomery County believes this will ensure that all pertinent information is provided and that cases will be reported correctly under the appropriate attorney.

Contact person(s): Montgomery County Auditor- Amanda Vance (936) 539-7820
Completion date: Immediately

APPENDICES

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APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

MONTGOMERY COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2017	2018	2019
Population Estimate	566,573	566,432	610,513
Juvenile Assigned Counsel	\$202,457	\$200,000	\$202,755
Capital Murder	\$476,248	\$158,315	\$363,679
Adult Non-Capital Felony Assigned Counsel	\$3,146,479	\$3,349,466	\$3,408,425
Adult Misdemeanor Assigned Counsel	\$1,063,612	\$1,019,949	\$1,057,935
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$178,293	\$153,021	\$157,161
Adult Misdemeanor Appeals	\$5,532	\$4,575	\$4,002
Licensed Investigation	\$234,573	\$253,623	\$297,991
Expert Witness	\$264,489	\$267,033	\$307,174
Other Direct Litigation	\$148,501	\$107,692	\$155,205
Total Court Expenditures	\$5,720,183	\$5,513,674	\$5,954,326
Administrative Expenditures	\$159,361	\$510,976	\$213,997
Funds Paid by Participating County to Regional Program	N/A	N/A	N/A
Total Public Defender Expenditures	N/A	N/A	N/A
Total Court and Administrative Expenditures	\$5,879,544	\$6,024,650	\$6,168,323
Formula Grant Disbursement	\$688,328	\$487,506	\$463,551
Reimbursement of Attorney Fees	\$218,842	\$251,953	\$137,847
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Public Defender Cases	N/A	N/A	N/A
Total Assigned Counsel Cases	8,716	9,010	8,703

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Montgomery County				
Year	2017	2018	2019	Texas 2019
Population (Non-Census years are estimates)	566,573	566,432	610,513	28,901,062
Felony Charges Disposed (from OCA report)	6,186	6,243	6,499	275,037
Felony Cases Paid	4,428	4,715	4,351	222,860
% Felony Charges Defended with Appointed Counsel	72%	76%	67%	81%
Felony Trial Court-Attorney Fees	\$3,622,726	\$3,507,781	\$3,772,103	\$143,210,108
Total Felony Court Expenditures	\$4,119,408	\$4,033,345	\$4,401,682	\$160,275,769
Misdemeanor Charges Disposed (from OCA report)	9,747	10,745	10,307	452,953
Misdemeanor Cases Paid	3,993	4,014	4,074	209,641
% Misdemeanor Charges Defended with Appointed Counsel	41%	37%	40%	46%
Misdemeanor Trial Court Attorney Fees	\$1,063,612	\$1,019,949	\$1,057,935	\$47,236,136
Total Misdemeanor Court Expenditures	\$1,076,270	\$1,023,443	\$1,063,062	\$47,954,642
Juvenile Charges Added (from OCA report)	318	374	373	26,641
Juvenile Cases Paid	234	236	232	39,709
Juvenile Attorney Fees	\$202,457	\$200,000	\$202,755	\$10,795,227
Total Juvenile Expenditures	\$207,357	\$201,000	\$202,755	\$11,236,143
Total Attorney Fees	\$5,072,620	\$4,885,325	\$5,193,956	\$206,610,474
Total ID Expenditures	\$5,879,544	\$6,024,650	\$6,168,323	\$303,021,373
Increase in Total Expenditures over Baseline	296%	306%	316%	242%
Total ID Expenditures per Population	\$10.38	\$10.64	\$10.10	\$10.48
Commission Formula Grant Disbursement	\$688,328	\$487,506	\$463,551	\$23,290,906
Cost Recouped from Defendants	\$218,842	\$251,953	\$137,847	\$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:
- <http://www.tidc.texas.gov/documents/posts/2019/october/fy2019-indigent-defense-expenditure-report-manual/>

APPENDIX C – DISTRIBUTION LIST

The Honorable Mark Keough
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The Honorable Claudia Laird
Local Administrative Statutory County Court Judge
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The Honorable Dennis Watson
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