



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Bastrop County, Texas**

**FY2020 Indigent Defense Expenses**

**Final Report**

**March 31, 2022**

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## EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of Bastrop County beginning on April 15, 2021. Email exchanges continued until August 10, 2021. 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, 2019, through September 30, 2020 (FY2020).

### SUMMARY OF FINDINGS

- The FY2020 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not prepared in the manner required. Specifically:
  1. General court expenditures were included; and
  2. Case counts were not reported properly.
- 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 FY2020. The records reviewed were provided by the Bastrop 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 Bastrop 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

Bastrop County was formerly known as Mina County and was one of the original 23 counties of the Republic of Texas.

The area that is now Bastrop County was first occupied in 1804, when a fort named Puesta del Colorado was established at the Colorado River crossing of the Old San Antonio Road. In 1823, Felipe Neri, Baron de Bastrop obtained permission from the Spanish government to establish a German colony and selected the site, but subsequently failed.

On November 20, 1827, Stephen F. Austin entered another contract with the Mexican government of the state for 100 families to be settled on the east side of the Colorado above the San Antonio Road. Jose Miguel de Arciniega had been appointed land commissioner for Stephen F. Austin's colonies in November 1830. In this position, he signed a four-league grant for the town, which he officially platted and named Bastrop on June 8, 1832. Two years later, however, the legislature of what was called the State of Coahuila and Texas renamed it Mina, in honor of Francisco Xavier Mina, a Mexican martyr and hero. On December 14, 1837, the second Congress of the Republic of Texas adjusted geographical limits to create Fayette County and removed Gonzales and Caldwell Counties from Mina boundaries. On December 18, 1837, Sam Houston signed acts that (a) incorporated the town of Mina, and (b) changed the name of the County and town of Mina to Bastrop in honor of Felipe Enrique Neri, Baron de Bastrop.

The county seat of Bastrop County is the City of Bastrop. Bastrop County serves an estimated population of 90,262 and occupies an area of 8,961 square miles, of which 7.4 square miles is water. Bastrop County is bordered by Caldwell, Fayette, Lee, Travis, and Williamson Counties.

Bastrop County is served by three district courts 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'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 FY2020 indigent defense online grant application to assist in the provision of indigent defense services. Bastrop County met the formula grant eligibility requirements and was awarded \$81,150 in formula 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. Bastrop County prepared and submitted the FY2020 Indigent Defense Expenditure Report (IDER). However, the FY2020 IDER submitted was not prepared in the manner required.

### Unallowable Expenditures

Bastrop County included some general court expenditures with the criminal indigent defense expenses in the FY2020 IDER. The general court expenses included on the IDER were competency evaluations and interpreters for the court.

A request for 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 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. An evaluation of competency to stand trial is not an eligible indigent defense expense, regardless of which party may initiate consideration of ordering such an evaluation.

An interpreter in the courtroom available for the judge, prosecutor, and defense team for a court proceeding is a general court expenditure and an unallowable expense to report on the IDER. Only the cost for an interpreter exclusively for the defense needed outside of court in the preparation of a defense would be allowable.

Eleven vouchers from the three categories on the IDER other than attorney fees were reviewed. Of these, five were for mental health evaluations. Four of the vouchers were marked that the bill included a competency evaluation.

These four vouchers for competency evaluations are considered general court expenditures that are ineligible to be reported on the IDER. The other six vouchers were all for the use of interpreters in the courtroom, which are also ineligible to be included on the IDER. One of the interpreter vouchers was for an Attorney General child support enforcement case and a second for a family law case, neither of which are criminal matters.

- The expenditures detailed above should not be included in the criminal indigent defense expense report. The IDER overstated the county's criminal indigent defense expenditures due to the inclusion of these ineligible costs. This could mean that the FY2021 formula grant for Bastrop County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual: <http://www.tidc.texas.gov/media/8d885e4bec7514c/fy2020-ider-manual.pdf>.

### **Case Counts**

Case counts for the number of disposed criminal cases were not prepared in the manner required by TIDC. It appears that the case count was derived from the number of payments made to attorneys and not the number of disposed cases.

One capital case had six interim payments, and each payment was counted as an additional case. It should have been reported as one case.

It was noted in the description of the general ledger and on 11 reviewed vouchers where an attorney reported multiple cases that the auditor reported one case instead of the two or three cases listed.

Additionally, attorneys are submitting vouchers for writs of habeas corpus or bond review hearings in which \$100 per hearing is requested and paid. These vouchers are being counted as a disposed criminal case. If the payment for the hearing represents the final disposition of the case, then this would be appropriate. If the writ is for an underlying criminal case, the cost of the representation is allowable, but the expense should not be considered a separate case from the underlying case that is challenged in the writ. Counting the writ as a separate case overstates the number of indigent cases paid.

TIDC noted that six of the 30 vouchers reviewed included description of a writ or bond hearing as the defense representation to be paid. Four of these six vouchers listed the writ hearing number as the case number. Of the remaining two vouchers, one listed both the magistrate number and a writ number as cause numbers and the other listed the magistrate number as cause number and the writ number as the activity.

Bastrop County may have overstated the number of disposed cases if the writ of habeas corpus case voucher were not the final disposition of the underlying criminal case.

### **Recommendations:**

1. The County must develop procedures to identify and record expenses for mental health experts requested by the appointed defense counsel 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 expenses.

2. Procedures must also be developed to separate interpreter expenses of the court and those that might be used exclusive by defense counsel outside of court proceedings in preparation of a defense.
3. The County must identify and report to TIDC the amount of the mental health costs and interpreter expenses that were for the exclusive use by the defense included in the FY2020 IDER.
4. The County should develop a procedure to identify when the payment for a case indicates final disposition in order to accurately count cases

### **County Response**

*We concur and have a Corrective Action Plan prepared.*

### **Bastrop County Action Plan**

*Bastrop County will develop new processes and procedures to identify and record expenses for the TIDC IDER Report to ensure correct expenditures and accurate final case counts. This process will include keeping a detailed ledger as well as bimonthly evaluations of all invoices. The Bastrop County Auditor's Office will work closely with the courts to ensure that the changes outlined in the recommendations are implemented appropriately.*

**Contact person(s):** *Amber Quinley*

**Completion date:** *March 1, 2022*

### **Finding Two – Fee schedule**

TIDC examined 30 attorney fee vouchers to determine whether indigent defense payments met the requirements of Article 26.05(b) and the local fee schedule. Nine of the 30 attorney fee vouchers reviewed for FY2020 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 fee schedule adopted for felony level cases provides for either a flat fee of \$400 for a case disposed with a plea or an hourly rate between \$75 to \$150. A separate rate of \$500 per day while the case is in trial or up to \$1000 for pretrial preparation can be requested. The fee schedule adopted for misdemeanor and juvenile cases provides for either a flat rate of \$250 for the first case and \$125 for subsequent case(s) or an hourly rate of \$75. Also, for juvenile cases, \$100 can be requested for detention hearings.

TIDC found one voucher in which the attorney was paid \$225 per hour, while another eight vouchers paid both a flat fee amount and additional hourly amounts. The flat fee amounts requested ranged from the \$400 to \$1000.

\$100 was requested and paid for the writ of habeas corpus hearings and other bond hearings. Neither this hearing type, nor the amount, is listed on the fee schedule.

**Recommendation:**

Judges should review the fee schedules and take formal action, if necessary, to adopt a new fee schedule that is consistent with current payment practices in accordance with the requirements of CCP Article 26.05(b).

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**

*The District Judges serving Bastrop County concur and have a Corrective Action Plan prepared.*

**Bastrop County Action Plan**

*The District Judges serving Bastrop County will review the fee schedule and will modify and adopt a new fee schedule that is consistent with current payment practices in accordance with the requirements of Texas Code of Criminal Procedure Article 26.05(b).*

*Additionally, the District Judges will not approve any vouchers that fail to comply with the new fee schedule. (\*\*All Action Plans are subject to change when the Office of Court Administration promulgates new rules for the implantation of Senate Bill 6 later in 2022).*

**Contact person(s):**

*Hon. Judge Reva Towslee Corbett, 335<sup>th</sup> Judicial District Court; Hon. Judge Carson T. Campbell 21<sup>st</sup> Judicial District Court; and Hon. Judge Christopher D. Duggan, 423<sup>rd</sup> Judicial District Court.*

**Completion date:** *June 1, 2022*

## **Observation**

Bastrop has nine magistrates, and each magistrate has their own numbering system. It appears that attorneys use the number assigned from the magistrate on their vouchers, especially, if the case is pre-indictment. Eleven of the 30 vouchers reviewed appeared to include an indicted case number. Felony cases appear to be numbered in the 15,000 to 17,000 range and misdemeanor cases are numbered in the 50,000 to 60,000 range. At the time a case is indicted, it is assigned a case number, and the clerks will report the case as a new case. The county data derived from the District Clerk reporting to OCA on new case filings for the year and the number of cases reported as paid by the auditor resulted in an estimated felony appointment rate of 201%. It is unclear how many cases are dismissed before an indictment is filed, but that factor appears to be the explanation for an estimated appointment rate over 100%.

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>BASTROP COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Population Estimate	89,072	88,296	90,262
Juvenile Assigned Counsel	\$16,750	\$17,175	\$12,570
Capital Murder	\$111,078	\$224,100	\$244,498
Adult Non-Capital Felony Assigned Counsel	\$275,299	\$274,805	\$244,175
Adult Misdemeanor Assigned Counsel	\$200,856	\$214,955	\$135,866
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$28,305	\$43,385	\$31,057
Expert Witness	\$112,486	\$57,748	\$29,344
Other Direct Litigation	\$78,483	\$72,651	\$60,727
<b>Total Court Expenditures</b>	<b>\$823,257</b>	<b>\$904,819</b>	<b>\$758,236</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>\$823,257</b>	<b>\$904,819</b>	<b>\$758,236</b>
Formula Grant Disbursement	\$60,831	\$70,646	\$81,150
Reimbursement of Attorney Fees	\$45,387	\$50,999	\$31,726
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>1,322</b>	<b>1,451</b>	<b>1,088</b>

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Bastrop County</b>				
<b>Year</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Texas 2020</b>
Population (Non-Census years are estimates)	89,072	88,296	90,262	29,149,480
Felony Charges Disposed (from OCA report)	308	335	255	207,142
Felony Cases Paid	506	542	512	183,123
% Felony Charges Defended with Appointed Counsel	164%	162%	201%	88%
Felony Trial Court-Attorney Fees	\$386,377	\$498,905	\$488,673	\$122,376,695
Total Felony Court Expenditures	\$593,449	\$657,688	\$598,781	\$136,468,400
Misdemeanor Charges Disposed (from OCA report)	991	846	425	304,810
Misdemeanor Cases Paid	724	795	515	149,070
% Misdemeanor Charges Defended with Appointed Counsel	73%	94%	121%	49%
Misdemeanor Trial Court Attorney Fees	\$135,866	\$214,955	\$135,866	\$35,988,801
Total Misdemeanor Court Expenditures	\$213,058	\$229,956	\$146,885	\$36,626,732
Juvenile Charges Added (from OCA report)	72	50	47	18,689
Juvenile Cases Paid	92	114	61	30,149
Juvenile Attorney Fees	\$16,750	\$17,175	\$12,570	\$8,561,322
Total Juvenile Expenditures	\$16,750	\$17,175	\$12,570	\$8,753,040
Total Attorney Fees	\$603,983	\$731,035	\$637,109	\$171,807,987
Total ID Expenditures	\$823,257	\$904,819	\$758,236	\$271,232,154
Increase in Total Expenditures over 2001 Baseline	214%	245%	189%	205%
Total ID Expenditures per Population	\$9.24	\$10.25	\$8.40	\$9.30
Commission Formula Grant Disbursement	\$60,831	\$70,646	\$81,150	\$25,955,677
Cost Recouped from Defendants	\$45,387	\$50,999	\$31,726	\$8,682,864

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
- FY2020 Indigent Defense Expenditure Report Manual found at:  
<http://www.tidc.texas.gov/media/8d885e4bec7514c/fy2020-ider-manual.pdf>

## APPENDIX C – DISTRIBUTION LIST

The Honorable Paul Pape  
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