



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Karnes County, Texas**

**FY 2020 Indigent Defense Expenses**

**Final Report**

**August 31, 2022**

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# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of Karnes County beginning on May 12, 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 (FY 2020).

## SUMMARY OF FINDINGS

- Attorney fee vouchers did not comply with Article 26.05(c).
- 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.
- The FY 2020 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not prepared in the manner required.

## 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 Karnes 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 Karnes 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

Karnes County was established by the Texas Legislature on Feb 4, 1854, from parts of Bexar, Gonzales, DeWitt, Goliad, and San Patricio Counties. The County is named after Henry Karnes, a soldier in the Texas Revolution. He was the commander of General Sam Houston's "Spy Squad" at the battle of San Jacinto.

Karnes County is southeast of San Antonio in the Rio Grande Plain region. The current population is estimated at 15,778, and the county seat is Karnes City. Karnes County occupies an area of 754 square miles, of which 6 square miles is water. The County is bordered by Atascosa, Bee, DeWitt, Goliad, Gonzales, Live Oak, and Wilson Counties.

Karnes County is served by two district courts and the 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'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 2020 indigent defense online grant application to assist in the provision of indigent defense services. Karnes County met the formula grant eligibility requirements and was awarded \$23,562 in formula grant award.

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

Four of the 35 attorney fee vouchers reviewed did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05(c), because the vouchers did not appear to be itemized vouchers submitted to the judges. CCP Article 26.05(c) reads, in part:

No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. 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.

The payment records for the juvenile cases appear to be in the form of a court order to pay signed by the judge. Attorneys should submit vouchers to the judges for approval. The judge's order to pay an attorney, standing on its own, is insufficient to satisfy the requirement that a form itemizing the services performed be submitted to the judge. Therefore, Karnes County is not in compliance with Article 26.05(c).

### **Recommendation:**

Juvenile defense attorneys must submit a form itemizing the services performed and the amount billed to the judges for approval.

### **Karnes County Action Plan**

*The Judge will review all vouchers to make sure all services are detailed on the voucher prior to submittal for payment.*

**Contact person(s):** Mr. Tom Dupnick, County Auditor

**Completion date:** August 17, 2022

### **Finding Two**

Twelve of 35 attorney fee vouchers reviewed did not appear to be paid in accordance with the published fee schedule as required by CCP Article 26.05(b). The payment records for misdemeanor and felony cases that are to be paid the flat rate appear to be a section of an "affidavit of indigence" form. The form is three pages, with the first two pages and one-third of the third page completed by the defendant. There is a section on the third page for the attorney to complete and sign if they agree to accept a flat rate amount. The final section is for the judge's approval signature. The judge appears to fill out the amount to pay. The published fee schedule indicates that the flat fee is \$400 per misdemeanor case. One voucher with three cases listed was paid \$800.

Six vouchers with two cases listed were paid \$450, and another voucher listing two cases was paid \$550. One voucher was not paid the amount approved by the judge.

The fee schedule lists hourly rates for juvenile cases at \$75 for in-court time and \$50 for out-of-court time. Pay records provided for juvenile cases did not include vouchers from the attorneys and there were no records of hours worked. Therefore, the amounts of \$200 and \$600 approved for juvenile cases reviewed are not supported by the fee schedule.

**Recommendation:**

Attorneys must submit itemized vouchers requesting payment. Judges should review the fee schedules and take formal action, if necessary, to revise them to be consistent with current payment practices in accordance with the requirements of CCP Article 26.05(b).

**Karnes County Action Plan**

*Karnes County Commissioners Court updated the fee schedule on August 16, 2022.*

*The Judge's office will update the ID plan and upload the new schedule into the PPRI website.*

**Contact person:** *Ms. Lori Riley, Indigent Defense Coordinator*

**Estimated Completion date:** *September 1, 2022*

**Finding Three**

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. Karnes County prepared and submitted the FY 2020 Indigent Defense Expenditure Report (IDER). However, the FY 2020 IDER submitted was not prepared in the manner required.

One of the 35 vouchers reviewed was for a civil case and was included on the criminal court report of the IDER. Another voucher included an amount for reimbursement to an attorney for an expense and was categorized as an attorney fee on the IDER. This expense is eligible but should be categorized as “other litigation” expense on the IDER.

Karnes County includes attorney fees for all case types in a general ledger account for the court. Criminal cases are designated by “CRK” in the case numbering system, juvenile cases include “JVK” in the case number, and “CVK” indicates a civil case. To prepare the IDER, these case types must be separated. TIDC also identified one criminal case on the general ledger that was mistakenly coded as a civil case with the “CVK” designation.

**Recommendation:**

To facilitate accurate reporting of the IDER, Karnes County should consider recording civil case information separately from the criminal cases on the general ledger so that expenditures in each

category are clearly distinguished. Also, amounts paid to attorneys that are not attorney fees, but rather reimbursement of expenses, must be separated and reported in the correct IDER expenditure category.

### **Karnes County Action Plan**

*Project codes have been set-up in the accounting software to separate all cases by court and convictions for year-end reporting purposes including reimbursable expenses.*

**Contact person(s):** *Mr. Tom Dupnick, County Auditor*

**Completion date:** *October 1, 2021*

### **Conclusion**

TIDC appreciated the professionalism and assistance provided by Karnes County officials and staff. However, a follow-up review verifying the CAP is in place and working may be initiated.

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

| <b>KARNES COUNTY INDIGENT DEFENSE EXPENDITURES</b>            |             |             |             |
|---|-------------|-------------|-------------|
| <b>Expenditures</b>   | <b>2018</b> | <b>2019</b> | <b>2020</b> |
| Population Estimate   | 15,182      | 15,304      | 15,778      |
| Juvenile Assigned Counsel                                     | \$6,800     | \$7,079     | \$6,278     |
| Capital Murder  | \$0         | \$0         | \$0         |
| Adult Non-Capital Felony Assigned Counsel                     | \$120,300   | \$70,803    | \$39,524    |
| Adult Misdemeanor Assigned Counsel                            | \$0         | \$76,425    | \$50,650    |
| Juvenile Appeals  | \$0         | \$0         | \$0         |
| Adult Felony Appeals  | \$0         | \$0         | \$0         |
| Adult Misdemeanor Appeals                                     | \$0         | \$0         | \$0         |
| Licensed Investigation  | \$0         | \$0         | \$0         |
| Expert Witness  | \$0         | \$0         | \$0         |
| Other Direct Litigation                                       | \$0         | \$0         | \$0         |
| Total Court Expenditures                                      | \$127,100   | \$154,607   | \$96,452    |
| Administrative Expenditures                                   | \$0         | \$0         | \$0         |
| Funds Paid by Participating County to Regional Program        | \$3,845     | \$3,845     | \$2,914     |
| Total Public Defender Expenditures                            | NA          | NA          | NA          |
| Total Court and Administrative Expenditures                   | \$130,945   | \$158,152   | \$99,366    |
| Formula Grant Disbursement                                    | \$16,069    | \$26,514    | \$23,562    |
| 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                                  | 261         | 284         | 223         |

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

| <b>Karnes County</b>                                  |             |             |             |                   |
|---|-------------|-------------|-------------|-------------------|
| <b>Year</b>   | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>Texas 2020</b> |
| Population (Non-Census years are estimates)           | 15,182      | 15,304      | 15,778      | 29,149,480        |
| Felony Charges Disposed (from OCA report)             | 29          | 1           | 7           | 207,142           |
| Felony Cases Paid                                     | 101         | 92          | 81          | 183,123           |
| % Felony Charges Defended with Appointed Counsel      | 348%        | 9200%       | 1157%       | 88%               |
| Felony Trial Court-Attorney Fees                      | \$120,300   | \$70,803    | \$39,524    | \$122,376,695     |
| Total Felony Court Expenditures                       | \$120,300   | \$70,803    | \$39,524    | \$136,468,400     |
| Misdemeanor Charges Disposed (from OCA report)        | 235         | 375         | 296         | 304,810           |
| Misdemeanor Cases Paid                                | 133         | 169         | 123         | 149,070           |
| % Misdemeanor Charges Defended with Appointed Counsel | 57%         | 45%         | 42%         | 49%               |
| Misdemeanor Trial Court Attorney Fees                 | \$0         | \$76,425    | \$50,650    | \$35,988,801      |
| Total Misdemeanor Court Expenditures                  | \$0         | \$76,425    | \$50,650    | \$36,626,732      |
| Juvenile Charges Added (from OCA report)              | 0           | 0           | 0           | 18,689            |
| Juvenile Cases Paid                                   | 27          | 23          | 19          | 30,149            |
| Juvenile Attorney Fees                                | \$6,278     | \$7,079     | \$6,800     | \$8,561,322       |
| Total Juvenile Expenditures                           | \$6,278     | \$7,079     | \$6,800     | \$8,753,040       |
| Total Attorney Fees                                   | \$127,100   | \$154,307   | \$96,453    | \$171,807,987     |
| Total ID Expenditures                                 | \$130,945   | \$158,152   | \$99,367    | \$271,232,154     |
| Increase in Total Expenditures over 2001 Baseline     | 363%        | 459%        | 251%        | 205%              |
| Total ID Expenditures per Population                  | \$8.63      | \$10.33     | \$6.30      | \$9.30            |
| Commission Formula Grant Disbursement                 | \$18,407    | \$16,069    | \$26,514    | \$25,955,677      |
| Cost Recouped from Defendants                         | \$0         | \$0         | \$0         | \$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

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