



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Kinney County, Texas

FY2021 Indigent Defense Expenses

Final Report

November 22, 2022

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of Kinney County beginning on October 25, 2021. Email exchanges continued until February 3, 2022. 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, 2020, through September 30, 2021 (FY2021).

SUMMARY OF FINDINGS

- One attorney payment did 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 FY2021. The records reviewed were provided by the Kinney 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

- 100 % of paid attorney fee vouchers;
- General ledger transactions provided by the Kinney County auditor's office;
- Indigent Defense Expenditure Report (IDER);
- Attorney fee schedule;
- Any applicable contracts; and
- The County's local indigent defense plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Kinney County was created in 1850 from parts of Bexar County and organized in 1874. The County is named after Henry Lawrence Kinney, an early Texas settler. He was a founder of the city of Corpus Christi and served in both houses of the Texas Legislature.

Kinney County is located west of San Antonio on the border with Mexico. The current population is estimated at 3,594, and the county seat is Brackettville. Kinney County occupies an area of 1,365 square miles, of which 5.1 square miles is water. The County is bordered by Edwards, Maverick, Uvalde and Val Verde Counties in Texas and Jimenez, Coahuila in Mexico.

Kinney County is served by one district court 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 FY2020 indigent defense online grant application to assist in the provision of indigent defense services. Kinney County met the formula grant eligibility requirements and was awarded \$12,859 in formula grant award.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

TIDC examined 23 attorney fee vouchers to determine whether indigent defense payments met the requirements of Criminal Code of Procedure (CCP) Article 26.05(b) and the local fee schedule. One of the 23 attorney fee vouchers reviewed for FY2021 did not appear to be paid in accordance with the published fee schedule as required by Article 26.05(b).

The fee schedule for felony cases provides for a flat fee based on the level of case. For a state jail or third-degree felony, the flat rate is \$600 per case. For a second or first-degree felony, the flat rate is \$750 per case. For each additional case disposed or dismissed per defendant, the fee is \$200. Additionally, for other types of procedures, various flat rates apply.

TIDC found one voucher where the attorney was paid a flat rate of \$1,200 for a plea deal on a single felony case with 8 counts. The \$1,200 is more than the \$750 flat rate for a first or second-degree felony. The judge did not write an explanation for the variance from the fee schedule on the voucher.

Additionally, the Kinney County fee schedule includes the following exception: “In an unusual case, the factors set forth in Rule 1.04(b) of the Texas Disciplinary Rules of Professional Conduct may be taken into consideration in awarding a fee that is less than or more than the one established by the guidelines above.” Although this exception is provided in the fee schedule, it does not appear to comply with current case law. TIDC’s Indigent Defense Plan Instructions asked the judges to consider the *Wice* decision in setting the fee schedule. Following are those instructions:

*NEW Attorney Fee Schedule Information/ Wice decision*Judges should also review and amend, as needed, their attorney fee schedules to comply with the Court of Criminal Appeals opinion In re State ex rel. Wice v. Fifth Judicial Dist. Court of Appeals, 2018 Tex. Crim. App. LEXIS 1121. The majority opinion by Judge Newell was issued on November 21, 2018.*

The Court of Criminal Appeals held that a local rule authorizing the trial court to “opt out” of its own fee schedule conflicts with a statute (Article 26.05, Code of Criminal Procedure) that requires payment according to that fee schedule. The decision has implications for fee schedules across the state since many would permit payments outside of the established flat or hourly fees provided. Examples of potentially suspect language in fee schedules include provisions such as the following:

- “For good cause or exceptional circumstances, an appointed attorney may request payment at a rate above the rates specified ..., subject to review and approval by the judge presiding over the case.”*
- “The Court may deviate from this schedule for good cause.”*
- “Judge may deviate from above schedule in Judge’s discretion.”*
- “In the interest of justice, for just cause, or in exceptional cases, the Court in its discretion may approve fees that differ from this schedule.”*

According to the Court’s opinion in Wice, all portions of a fee schedule should state reasonable fixed rates or minimum and maximum hourly rates in line with Article 26.05, Code of Criminal Procedure. Judges should review their attorney fee schedules used in criminal and juvenile cases. Any fee schedules that are revised should be submitted with your indigent defense plans using the “Forms” tab.

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) and current case law.

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).

Kinney County Action Plan

Upon reviewing of the report by TIDC dated July 2022, the 63rd Judicial District Court will take the following measures to ensure the court appointed attorneys are paid in accordance to the Indigent Defense Plan:

- 1) the Court will email a copy of the Attorney Fee Schedule currently in place in Kinney County to all court appointed attorneys;*
- 2) any Attorney Fee Schedule and Order for Compensation submitted will be reviewed; any difference in the amount requested will be followed up with an email/phone call by court personnel to the appointed attorney;*
- 3) a review of our current fee schedule will be conducted for additional changes or clarifications.*

Contact person(s): *63rd District Judge Roland Andrade*

Completion date: *September 7, 2022*

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

| KINNEY COUNTY INDIGENT DEFENSE EXPENDITURES | | | |
|---|-------------|-------------|-------------|
| Expenditures | 2019 | 2020 | 2021 |
| Population Estimate | 3,711 | 3,594 | 3,594 |
| Juvenile Assigned Counsel | \$1,878 | \$0 | \$1,800 |
| Capital Murder | \$0 | \$0 | \$0 |
| Adult Non-Capital Felony Assigned Counsel | \$10,109 | \$8,700 | \$7,600 |
| Adult Misdemeanor Assigned Counsel | \$250 | \$0 | \$350 |
| Juvenile Appeals | \$0 | \$0 | \$0 |
| Adult Felony Appeals | \$2,500 | \$0 | \$0 |
| Adult Misdemeanor Appeals | \$0 | \$0 | \$0 |
| Licensed Investigation | \$0 | \$0 | \$0 |
| Expert Witness | \$0 | \$0 | \$0 |
| Other Direct Litigation | \$950 | \$3,158 | \$0 |
| Total Court Expenditures | \$15,687 | \$11,859 | \$9,750 |
| Administrative Expenditures | \$0 | \$0 | \$0 |
| Funds Paid by Participating County to Regional Program | \$1,000 | \$1,000 | \$1,000 |
| Total Public Defender Expenditures | NA | NA | NA |
| Total Court and Administrative Expenditures | \$16,687 | \$12,859 | \$10,750 |
| Formula Grant Disbursement | \$7,169 | \$16,687 | \$12,859 |
| 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 | 28 | 22 | 23 |

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

| Kinney County | | | | |
|---|-------------|-------------|-------------|-------------------|
| Year | 2018 | 2019 | 2020 | Texas 2020 |
| Population (Non-Census years are estimates) | 3,734 | 3,711 | 3,594 | 29,149,480 |
| Felony Charges Disposed (from OCA report) | 49 | 20 | 39 | 207,142 |
| Felony Cases Paid | 28 | 22 | 21 | 183,123 |
| % Felony Charges Defended with Appointed Counsel | 57% | 110% | 54% | 88% |
| Felony Trial Court-Attorney Fees | \$14,069 | \$10,109 | \$8,700 | \$122,376,695 |
| Total Felony Court Expenditures | \$14,114 | \$10,310 | \$10,659 | \$136,468,400 |
| Misdemeanor Charges Disposed (from OCA report) | 94 | 49 | 36 | 304,810 |
| Misdemeanor Cases Paid | 13 | 1 | 0 | 149,070 |
| % Misdemeanor Charges Defended with Appointed Counsel | 14% | 2% | 0% | 49% |
| Misdemeanor Trial Court Attorney Fees | \$3,597 | \$250 | \$0 | \$35,988,801 |
| Total Misdemeanor Court Expenditures | \$4,016 | \$250 | \$0 | \$36,626,732 |
| Juvenile Charges Added (from OCA report) | 3 | 0 | 0 | 18,689 |
| Juvenile Cases Paid | 0 | 4 | 1 | 30,149 |
| Juvenile Attorney Fees | \$0 | \$1,878 | \$0 | \$8,561,322 |
| Total Juvenile Expenditures | \$0 | \$2,627 | \$1200 | \$8,753,040 |
| Total Attorney Fees | \$17,666 | \$14,737 | \$8,700 | \$171,807,987 |
| Total ID Expenditures | \$19,130 | \$16,687 | \$12,859 | \$271,232,154 |
| Increase in Total Expenditures over 2001 Baseline | 276% | 228% | 153% | 205% |
| Total ID Expenditures per Population | \$5.12 | \$4.50 | \$3.58 | \$9.30 |
| Commission Formula Grant Disbursement | \$7,139 | \$7,169 | \$16,687 | \$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
- FY2021 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/8d98cc6722c9897/fy2021-ider-manual-final.pdf>

APPENDIX C – DISTRIBUTION LIST

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