



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Jim Wells County, Texas

FY 2018 Indigent Defense Expenses

Final Report

April 3, 2020

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Jim Wells County on May 13-16, 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.

- Civil case expenditures were included with the criminal indigent defense expenses;
- General court expenditures were included with the criminal indigent defense expenses; and
- Some attorney fee payments on criminal cases were not included.

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 Jim Wells 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 Jim Wells 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

Jim Wells County was created on March 11, 1911 from parts of Nueces County. The County was named for James B. Wells, Jr, a prominent attorney and business leader in South Texas. The county seat is Alice.

Jim Wells County serves an estimated population of 40,240. Jim Wells County occupies an area of 868 square miles, of which 3.4 square miles is water. The neighboring counties are Brooks, Duval, Kleberg, Live Oak, Nueces, and San Patricio.

Jim Wells County is served by the 79th District Court, the County Court-at-Law, 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 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. Jim Wells County met the formula grant eligibility requirements and was awarded \$27,995.

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. Jim Wells 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.

Jim Wells County included some general court and civil case expenditures with the criminal indigent defense expenses in the FY 2018 IDER submitted under Texas Government Code Section §79.036 (e):

- Jim Wells County included civil case attorney fees with the criminal indigent defense expenses. Forty-five attorney fee vouchers were reviewed for the review process. Of these vouchers, seven were for civil case matters.
- The amount of \$5,095 listed as expert witness cost reported for juvenile cases were for mental health evaluations or clinical assessments that were billed to the juvenile probation department. None of these costs appear to be requested by the defense attorney in preparation of a defense.
- Of the \$4,450 listed for expert witness costs under the district court report, only one voucher for \$2,200 provided an *ex parte* motion for the defense and is an allowable expense to be reported on the IDER. The remaining three vouchers indicated that they were evaluations to determine competency to stand trial, which is considered a general court expenditure and is not eligible to be reported on the IDER.

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.

These general court and civil case 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 on the general ledger provided did not support the amounts claimed on the IDER. The reviewer initiated a reconciliation procedure of the financial data from the official county records to the IDER report. It appears that fees paid on multiple attorney fee vouchers were not included on the IDER. The Jim Wells County assistant auditors indicated that to prepare the IDER, they calculate totals based on vouchers filed

in individual file folders for each attorney. However, some vouchers were misfiled, and the amounts for missing vouchers were not captured on the IDER, leading to the understatement of attorney fees.

- Parts of the IDER was overstated by including ineligible costs, and parts of the IDER were understated by not including all of the eligible attorney fees. The formula grant is calculated based on the reported IDER expenditures. The FY 2019 formula grant for Jim Wells 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 train personnel to distinguish the difference between criminal and civil cases and include only the cost of criminal matters on the IDER.

The County should develop procedures to verify that all attorney fee vouchers are reconciled with the general ledger and included on the IDER.

The County must identify and report to TIDC the amount of the mental health costs and the amount of civil case matters included in the FY 2018 IDER that were not eligible based on the finding above.

County Response

- ***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 Auditor's office requested that the Judges and/or Court Managers indicate on the PO's submitted for payment, who requested the examinations and for what purpose.

- ***The County must train personnel to distinguish the difference between criminal and civil cases and include only the cost of criminal matters on the IDER.***

Assistant Auditors, Diana Flores and Leticia Garcia, both attended the Hidalgo County IDER Training Session held at the Hidalgo County Health Department located on 1304 S. 25th Street, Edinburg, Texas 78539 at 10:00 a.m. on Friday, October 18, 2019 where this was discussed.

- ***The County should develop procedures to verify that all attorney fee vouchers are reconciled with the general ledger and included on the IDER.***

The Auditor's Office has been informed by each of the Judges' offices as to how the cases are distinguished from one another, civil or criminal, especially Juveniles. After criminal cases are recorded, they are then compared to the general ledger every 3 months making sure that they are correctly entered and identified.

- ***The County must identify and report to the TIDC the amount of the mental health costs and the amount of civil case matters included in the FY 2018 IDER that were not eligible based on finding above.***

Amount for mental health costs not allowed and included in the FY 2018 IDER were \$7,345.00

Amount for civil case matters included and not allowed in the FY 2018 IDER were \$10,695.00

Jim Wells County Action Plan

Objective: *Jim Wells County strives to be as accurate and transparent as possible in reporting all financial transactions and activities related to the Fiscal aspects of the IDER report.*

Activities:

- *Assistant auditors responsible with submitting of the IDER Report will continue to attend any training sessions offered by the state or any other entity offering such training.*
- *If any questions or concerns arise when deciding what should be included in the report, we will get in touch with Debra Stewart, Fiscal Analyst, at (512)936-7561.*
- *Documentation submitted by the attorneys will be reviewed on a quarterly basis and any questions or concerns will be addressed at that time.*
- *Vouchers reviewed on the quarterly basis will also be compared to the Jim Wells County general ledger to make sure all data is included and accurate. If it is incorrect, it will be addressed at that time.*
- *All expert witness costs will also be reviewed and, if not directly stated on the voucher, we will address the departments submitting them for clarification.*

Contact Person(s): *Noe Gamez, Diana Flores, Leticia Garcia*

Completion Date: *March 18, 2020*

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

JIM WELLS COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2016	2017	2018
Population Estimate	40,004	39,557	40,240
Juvenile Assigned Counsel	\$65,638	\$20,856	\$32,590
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$176,612	\$133,697	\$119,368
Adult Misdemeanor Assigned Counsel	\$18,496	\$19,045	\$22,140
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$3,556	\$750
Expert Witness	\$4,595	\$8,855	\$9,545
Other Direct Litigation	\$0	\$200	\$0
Total Court Expenditures	\$265,340	\$186,208	\$184,393
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
Total Public Defender Expenditures	NA	NA	NA
Total Court and Administrative Expenditures	\$265,340	\$186,208	\$184,393
Formula Grant Disbursement	\$35,941	\$42,803	\$27,995
Reimbursement of Attorney Fees	\$2,410	\$3,771	\$6,348
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	NA	NA	NA
Total Assigned Counsel Cases	501	361	417

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Jim Wells County

Year	2016	2017	2018	Texas 2018
Population (Non-Census years are estimates)	40,004	39,557	40,240	28,525,596
Felony Charges Added (from OCA report)	385	345	423	288,260
Felony Cases Paid	356	276	282	215,240
% Felony Charges Defended with Appointed Counsel	92%	80%	67%	75%
Felony Trial Court-Attorney Fees	\$176,612	\$133,697	\$119,368	\$127,990,245
Total Felony Court Expenditures	\$177,612	\$142,452	\$124,568	\$144,671,726
Misdemeanor Charges Added (from OCA report)	584	627	724	467,851
Misdemeanor Cases Paid	32	9	10	214,494
% Misdemeanor Charges Defended with Appointed Counsel	5%	1%	%	46%
Misdemeanor Trial Court Attorney Fees	\$18,496	\$19,045	\$22,140	\$43,911,167
Total Misdemeanor Court Expenditures	\$18,496	\$19,045	\$22,140	\$44,786,546
Juvenile Charges Added (from OCA report)	7	12	28	28,970
Juvenile Cases Paid	113	76	125	41,578
Juvenile Attorney Fees	\$65,638	\$20,856	\$32,590	\$11,805,587
Total Juvenile Expenditures	\$69,233	\$24,711	\$37,685	\$12,312,690
Total Attorney Fees	\$260,745	\$173,598	\$174,098	\$189,152,540
Total ID Expenditures	\$265,340	\$186,208	\$184,393	\$276,229,545
Increase in Total Expenditures over Baseline	76%	24%	23%	211%
Total ID Expenditures per Population	\$6.63	\$4.71	\$4.58	\$9.84
Commission Formula Grant Disbursement	\$35,941	\$42,803	\$27,995	\$23,320,001
Cost Recouped from Defendants	\$2,410	\$3,771	\$6,348	\$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

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