



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Hays County, Texas**

**FY 2017 Indigent Defense Expenses**

**Final Report**

**February 15, 2019**

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## EXECUTIVE SUMMARY

TIDC conducted an on-site fiscal monitoring review of Hays County on March 20-23, 2018. TIDC simultaneously conducted a policy monitoring review, the results of which are reported separately. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of Texas Indigent Defense Commission (TIDC) grants.

The fiscal monitor reviewed the expenditure period of October 1, 2016 through September 30, 2017 (FY2017).

### SUMMARY OF FINDINGS

- 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).
- Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present on vouchers as required by CCP Article 26.05(c).

### OBJECTIVE

The objectives of this review were to:

- Determine the accuracy of the Indigent Defense Expenditure Report (IDER);
- 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 FY2017. The records reviewed were provided by the Hays 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 the County Auditor and an Assistant County Auditor. The fiscal monitor reviewed:

- Random samples of paid attorney fees;
- General ledger transactions provided by the Hays 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

Hays County was formed by the Texas legislature from portions of Travis County on March 1, 1848. In 1858, Blanco County was formed from part of Hays County, while at the same time part of Comal County was transferred to Hays County. In 1862, more of Comal County was transferred to Hays County, and in 1955, an additional 16,000 acres was transferred to Hays County from Travis County. Hays County occupies an area of 680 square miles, of which 1.9 square miles is water.

Hays County is located on the Edwards Plateau in central Texas and is bordered by Blanco, Caldwell, Comal, Guadalupe and Travis counties. The county seat is San Marcos. Hays County is part of the Austin-Round Rock, TX Metropolitan Statistical Area and is one of the fastest growing counties in the nation. Hays County serves an estimated population of 205,502. The County is named for John Coffee Hays, a Texas Ranger and Mexican-American War officer.

Four district courts and two statutory county courts reported indigent defense expenses in FY2017. In Hays County, all felony cases are filed in the 22<sup>nd</sup> District Court, but judges for the 207<sup>th</sup> District Court, 274<sup>th</sup> District Court, or 428<sup>th</sup> District Court may hear these cases. All misdemeanor and juvenile cases are filed in County Court at Law #1, but the judge over County Court at Law #2, may also hear these cases. The auditor reports cases paid according to the judge signing the respective attorney fee voucher.

#### 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, effective September 1, 2011. The Commission 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 United States 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 2017 indigent defense online grant application to assist in the provision of indigent defense services. Hays County met the formula grant eligibility requirements and was awarded \$166,823 for FY 2017.

# DETAILED FINDINGS AND RECOMMENDATIONS

## **Finding One**

- 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 Procedures (CCP).

TIDC examined 90 attorney fee vouchers to determine whether indigent defense payments met the requirements of CCP Article 26.05 and the local fee schedule. The fee schedule adopted by the district courts indicates that attorneys can opt to be paid either a flat rate ranging from \$500 to \$650.00 or an hourly rate ranging from \$50 to \$100 for in-court time and \$50 to \$80 for out-of-court time.

Attorneys do not always request a specific amount on their submitted vouchers; however, they do itemize the hours worked on each voucher. It appears that the judges decide and authorize the amount to be paid for these vouchers, but the amounts authorized do not always fall within the range of the fee schedule outlined in the indigent defense plan. The monitor found nine vouchers from the 57 district court attorney fee vouchers reviewed that did not conform to the fee schedule. Eight of the vouchers were paid at hourly rates between \$40 and \$49. One was paid at an hourly rate of \$111.

## **Recommendation:**

Judges should review the fee schedule 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).

## **District Court Response**

*Although the Hays County District Court's Fee Schedule is in compliance with Code of Criminal Procedure Article 26.05(b) a few attorney vouchers either exceeded the maximum hourly rate or fell below the minimum hourly rate.*

*Obviously, this not acceptable according to the Fee Schedule and the CCP.*

## **Hays County District Court Action Plan**

*To be in compliance the District Court Judges will adhere to the current fee schedule and stay within the established hourly rates. Additionally, the Hays County Auditor will review the attorney vouchers to assure compliance is met.*

*Furthermore, the District Courts will review and, if necessary, adopt a new fee schedule and submit it to the Texas Indigent Defense Commission prior to November 1, 2019.*

**Contact person(s):** *Steve Thomas, Hays County District Court Administrator Completion*

**Completion date:** *Immediately*

## **Finding Two**

- Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present as required by CCP Article 26.05(c)

The CCP Article 26.05(c) reads in part, “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 fee voucher adopted by the courts includes spaces to itemize services rendered. The attorneys appear to properly itemize their time for services provided, but the attorneys do not always request a specific payment amount. Three of the reviewed attorney fee vouchers in which the attorney requested a specific payment amount were approved for a payment for less than the requested amount.

- One voucher requested a flat rate of \$650 but was approved for \$600.
- One voucher requested \$4,140.00 for 69 hours at \$60.00 but was approved for \$3,800.00.
- One voucher requested \$3,337.50 for 44.5 hours at \$75.00 but was approved for \$2,500.00.

None of these vouchers included an explanation for the variance as required by CCP 26.05(c).

### **Recommendation:**

The judges must provide written explanation for any variance in the amount approved and the amount requested by the attorney to comply with CCP 26.05(c).

### **District Court Response:**

*The examined attorney vouchers indeed did not have an explanation as to why a different amount was paid to the attorney as stated in the finding. This practice is not consistent with the Article 26.05(c) of the CCP and will be corrected.*

### **Hays County District Court Action Plan**

*The District Judges will make written findings when the amount requested by an attorney is approved for a different amount than what was submitted. Similar to the preceding Finding, the Hays County Auditor's Office will review the attorney vouchers to ensure compliance is achieved. Once again, the District Court will review its Fee Schedule and, if necessary, will adopt a new Fee Schedule in accordance with CCP Article 26.05(c) and submit it to the Texas Indigent Defense Commission prior to November 1, 2019.*

**Contact person(s):** Steve Thomas, Hays County District Court Administrator

**Completion date:** Immediately

**Hays County Courts at Law Response:**

*The attorney vouchers that were examined for the report were from District Court cases and did not have a written explanation as to why a different amount was paid to the attorney as stated in the finding. This practice is not consistent with the CCP 26.0S(c) and was corrected. The County Court at Law reviewed vouchers and found that an explanation for pay variance was missing on some County Court at Law vouchers. This practice was corrected immediately.*

**Hays County Courts at Law Action Plan:**

*The County Courts at Law Judges will make written explanations when the amount approved for payment is different from the amount requested and submitted by the attorney as to comply with CCP 26.0S(c). The Hays County Auditor's Office will review the attorney vouchers to ensure compliance is achieved.*

**Contact person(s):** *Rene Garner, Hays County Court at Law Administrator and Tacie Zelhart, Local Administrative Statutory County Court at Law Judge*

**Completion Date:** *Immediately*

# APPENDICES



## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>HAYS COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Population Estimate	187,902	199,344	205,502
Juvenile Assigned Counsel	\$17,862	\$24,813	\$14,171
Capital Murder	\$0	\$1,100	\$17,500
Adult Non-Capital Felony Assigned Counsel	\$422,388	\$533,061	\$566,339
Adult Misdemeanor Assigned Counsel	\$192,423	\$125,578	\$143,303
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$49,565	\$52,660	\$69,244
Adult Misdemeanor Appeals	\$1,754	\$0	\$3,173
Licensed Investigation	\$13,204	\$14,207	\$20,937
Expert Witness	\$59,711	\$92,670	\$105,224
Other Direct Litigation	\$25,671	\$52,512	\$38,537
<b>Total Court Expenditures</b>	<b>\$782,578</b>	<b>\$896,600</b>	<b>\$978,428</b>
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
<b>Total Public Defender Expenditures</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Total Court and Administrative Expenditures</b>	<b>\$782,578</b>	<b>\$896,600</b>	<b>\$978,428</b>
Formula Grant Disbursement	\$125,002	\$120,871	\$166,823
Supplemental Capital Defense Grant	\$0	\$0	\$0
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$76,336	\$68,713	\$61,633
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
<b>Total Public Defender Cases</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Assigned Counsel Cases</b>	<b>1,818</b>	<b>1,690</b>	<b>1,768</b>

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Hays County</b>				
<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Texas 2017</b>
Population (Non-Census years are estimates)	187,902	199,344	205,502	28,059,337
Felony Charges Added (from OCA report)	1,107	1,380	1,471	279,474
Felony Cases Paid	737	814	909	212,428
% Felony Charges Defended with Appointed Counsel	67%	59%	62%	76%
Felony Trial Court-Attorney Fees	\$422,388	\$534,161	\$583,839	\$123,500,620
Total Felony Court Expenditures	\$494,894	\$650,520	\$715,084	\$141,042,744
Misdemeanor Charges Added (from OCA report)	3,758	4,224	4,924	473,896
Misdemeanor Cases Paid	888	638	698	217,002
% Misdemeanor Charges Defended with Appointed Counsel	24%	15%	14%	46%
Misdemeanor Trial Court Attorney Fees	\$192,423	\$125,578	\$143,303	\$43,271,420
Total Misdemeanor Court Expenditures	\$212,073	\$148,876	\$164,123	\$44,143,098
Juvenile Charges Added (from OCA report)	92	123	161	29,152
Juvenile Cases Paid	160	223	132	39,635
Juvenile Attorney Fees	\$17,862	\$24,813	\$14,171	\$11,386,741
Total Juvenile Expenditures	\$17,900	\$24,813	\$14,171	\$11,967,965
Total Attorney Fees	\$683,992	\$737,211	\$813,730	\$11,967,965
Total ID Expenditures	\$782,578	\$896,600	\$978,428	\$265,131,386
Increase in Total Expenditures over Baseline	91%	119%	139%	199%
Total ID Expenditures per Population	\$4.16	\$4.50	\$4.76	\$9.45
Commission Formula Grant Disbursement	\$125,002	\$120,871	\$166,823	\$31,751,772
Cost Recouped from Defendants	\$76,336	\$68,713	\$61,63	\$10,262,531

*Indigent Defense Expenditure Reporting*

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
- FY2017 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/57810/fy17-ider-manual.pdf>

## APPENDIX C – DISTRIBUTION LIST

Honorable Bert Cobb  
Constitutional County Judge  
Hays County  
111 E. San Antonio St., Suite 300  
San Marcos, TX 78666

Honorable Gary Steel  
Local Administrative District Judge  
274<sup>th</sup> District Court  
712 S. Stagecoach Trail, Suite 3240  
San Marcos, TX 78666

Honorable Robert E. Undegrove  
Local Administrative Statutory County Court Judge  
County Court at Law No.1  
712 S. Stagecoach Trail, Suite 2292  
San Marcos, TX 78666

Ms. Marisol Alonzo  
County Auditor  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, TX 78666

Ms. Vickie Dorsett  
County Administrative Contact  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, TX 78666

Mr. Geoffrey Burkhart  
Executive Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Wesley Shackelford  
Deputy Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Edwin Colfax  
Grants Program Manager, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701