



**TEXAS INDIGENT DEFENSE
COMMISSION**

Fiscal Monitoring Report

Bell County, Texas

FY 2015 Indigent Defense Expenses

Final Report

January 30, 2017

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EXECUTIVE SUMMARY

Bell County's on-site fiscal monitoring visit was conducted July 26-28, 2016 and follow up data was exchanged electronically through September 19, 2016.

The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants. The expenditure period of October 1, 2014 to September 30, 2015 (FY2015) was reviewed during the fiscal monitoring visit as well as documents to support the discretionary grant funding.

Summary of Findings

- General court expenditures were included with the criminal indigent defense expenses in the FY 2015 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e).
- The FY 2015 IDER was not prepared in the form and manner prescribed by the Commission as required under Section §79.036(e) of the Texas Government Code.
- Written explanations from judges for variance in amounts approved and amounts requested on attorney fee vouchers were not present on vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedures.

Objective

The objectives of this review were to:

- 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 services;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns about the indigent defense program requirements.

Scope

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grants during FY2015. Records provided by the Bell County Auditor's Office as well as records from the Bell County Indigent Defense office were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor met with the Bell County Auditor and staff as well as staff members of the Indigent Defense office. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- accounts payable ledger transactions provided by the Bell County Auditor's Office;
- IDER and attorney fee schedule;
- public attorney appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts;
- the county's local indigent defense plan;
- and discretionary grant records.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Bell County is located in central Texas. The county is part of the Killeen-Temple, Texas Metropolitan Statistical Area. The County serves an estimated population of 330,017 and is the center of population for Texas. The County seat is Belton and is named for Peter Hansborough Bell, the third governor of Texas. Bell County is a political subdivision of the State of Texas founded in 1850. The County occupies an area of 1,088 square miles, of which 37 square miles is water. The neighboring counties are McLennan, Falls, Milam, Williamson, Burnet, Lampasas and Coryell.

Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82nd Texas Legislature changed the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council and is administratively attached to the Office of Court Administration (OCA).

The Commission 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.

The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. The Commission 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 2015 indigent defense on-line grant application to assist in the provision of indigent defense services. Bell County met the formula grant eligibility requirements and was awarded \$266,571 for FY 2015.

Discretionary Grant

Bell County was awarded two discretionary grants - one in the amount of \$17,000 for a Mental Health Case Workers for Assigned Counsel System and a second grant in the amount of \$742,400 for the purpose of Functional Extension of the Bell County System. A review of these funds was also conducted.

Fair Indigent Defense Online (FIDo)

A discretionary grant was awarded to Bell County in 2011 for the purpose of developing computer software to assist the county with managing the county's indigent defense processes. The software is known as the Fair Indigent Defense Online (FIDo). FIDo has been successful and ten additional counties have begun to use the software. This software automates the manual process of capturing the data necessary to prepare the Indigent Defense Expenditure Report and allows the county to enter, monitor and report on compliance with both the Fair Defense Act and the county's local indigent defense plans.

The FIDo system has an online portal that attorneys utilize to submit fee vouchers, communicate with judges, report CLE hours, etc. This portal along with court data streamlines and provides transparency and accountability to the indigent defense processes in Bell County

The 2015 discretionary grant awarded was designed to enhance this core system for functionality for all participant counties and specifically address juvenile appointments and vouchers, a magistrate's portal, and additional integrations for other county data systems.

The 2015 enhancements have not been implemented as of this report date and was not implemented during the review period. The changes being implemented with the FIDo functional enhancements should assist the county in addressing findings two and three discussed below.

DETAILED FINDINGS WITH RESPONSES

Finding One

The county included some general court expenditures with the criminal indigent defense expenses in the FY 2015 Indigent Defense Expenditure Report (IDER) submitted under Texas Government Code Section 79.036 (e). The County Auditor's office provided the general ledger of activities for expert witness, investigation, and other direct costs, which supported the amounts reported on the IDER. Twenty-four invoices from the general ledgers for expert witness, investigation and other direct cost were reviewed. Two of these invoices were from visiting judges. The first of these invoices included expenses for daily rate of pay and reimbursement for mileage while the second invoice included only mileage. Both of these vouchers were generated from the paper voucher list and these type of expenses were not included on the FIDo system. As the expense to provide a judge in court is a general court expenditure, these expenses should not be included on the IDER. A review of the general ledger account for visiting judge expenses indicates a total of \$3,480.81 was reported improperly on the IDER,

General court expenditures 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 general court costs. This could mean that the FY 2015 formula grant for Bell 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/40464/fy15-ider-manual.pdf>

Recommendation:

Exclude the General Ledger code containing the “Special Judge’s” code of 5940 from the calculation of the IDER.

County Response

Bell County Action Plan

Bell County recognizes the invoice reviewed included pay that should have been excluded. However, when we were audited in 2009, we were told that the travel for the visiting judges is allowable for this program.

Going forward Bell County will not include any expense for the visiting judges.

Contact person(s): *Deborah Brown*

Response is acceptable

Finding Two

Under Section §79.036(e) of the Texas Government Code, the county auditor 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.

In reconciling the general ledger, the official record of the county, the expenses assigned to the various courts were not the amounts reported on the IDER for each court. Bell County has designed an account structure that should allow the county to prepare the court information for the IDER in the manner prescribed. The first three numbers of the account code represent the department. Each court has an assigned department number. The following four numbers represent the expense type, for example 5925 is attorney fee and 5815 for Expert Witness, etc. There are three additional digits to define the level/type of case. The general ledger can be sorted by court, then by type of expense, and then by level of case to determine the amounts required for the IDER. The data utilized for the paper vouchers appeared to be prepared in this manner. However, the data produced from the FIDo system was sorted to a court based on the judge’s signature and not by the court assigned the case. The FIDo system assumes that the judge only denotes the court in which he/she is assigned and that does not appear to be the case 100% of the time in Bell County. Attorney fee vouchers indicated case numbers for one court and the signature could be from a judge that sits in another court. The general ledger codes entered by Bell County staff also indicate the court code assigned the case and not necessarily the court code for the judge hearing the case. The total indigent defense expenditure amount tallied by the FIDo system appears to be the same amount generated by the General ledger for the criminal courts, so the total amount reported as indigent defense cost is not affected. However, the classification of the expenditures to the right court is not properly reported.

Recommendation: The County should continue to work with the software developer to produce a report that conforms to the form and manner prescribed by the Commission, which is to report the amount expended for indigent defense in each court and in each case in which appointed counsel are paid.

County Response

Bell County Action Plan

Effective October 1, 2016, the Tech Share Indigent Defense (TID) system (which replaces FIDo) was implemented in Bell County. The TID system has been in the works for approximately one and half years and was built, with the Commission's knowledge and partnership, to collect payment and case information at the court level. This fact was discussed with the reviewer during the review. Since the new software was implemented at the beginning of our reporting period, all reports after the 2016 report will be using the new functionality which gathers all this information at the court level.

Contact person(s): Deborah Brown

Response is acceptable

Finding Three

Code of Criminal Procedure (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” and “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 FIDo system has an attorney portal in which attorneys submit their vouchers online. Judges have access to these vouchers and approve them online as well. The FIDo system has at least two comment boxes available for communications between judges and attorneys. One comment box is designed for judges to write their explanation for disapproving a requested amount of payment. This box should appear on the voucher. The second comment box allows for other general comments to be entered and is intended for communication between the attorney and judges. Upon review of ninety-one (91) electronic vouchers generated from FIDo, nine (9) vouchers had a variance in the amount requested and the amount approved. Seven of these vouchers did not display the explanation from the judge and two had a comment that did not relate to the explanation for variance. An additional voucher was approved for an amount requested but had a general comment on the voucher in the variance explanation box. It was determined that the software program was capturing the general comment box and not the explanation for variance box on the voucher.

Recommendation:

Bell County officials should continue to work with software programmer to appropriately capture the reason provided by the judge when the judge disapproves the amount requested by an attorney.

County Response

Bell County Action Plan

The requested information is housed in FIDo (now TID) and therefore we do not believe this is a valid finding. The reviewer was offered the ability to look in FIDo for each of the invoices so that she could see that the information was available for review.

Bell County believes that FIDo, now TID, is the system of record for any appointed attorney payment that flows through this system. Our goal is to utilize electronic systems and documentation as much as possible instead of printing out data. Currently vouchers are only printed out because we do not have an electronic method to include them in our imaging system attached to our Accounts Payable system. Because the FIDo and TID systems house the reason provided by the judge, which is readily available to view, we do not feel this must be on a printed document. That being said, the new TID system will include this information on the voucher, if the voucher is printed. This was discussed with the reviewer during the review.

Overall Comment:

The original FIDo software was paid for by Bell County and Texas Indigent Defense Commission (TIDC). Bell County appreciates the Commission's continued support of enhancements for this system. Because the FIDo (TID) system is so critical to the capturing of cost that is reported and to the review itself, we believe it would be very beneficial to the Commission and to the reviewer to have a review of FIDo (TID) before the actual review of a County using TID happens. This would allow the reviewer to become familiar with the system and the information contained within the system separately instead of trying to incorporate this within the review of a county's records. It would also be beneficial since it is used by several counties.

Contact person(s): Deborah Brown

Response is acceptable

Additional Reviewer Comments

The Commission commends Bell county for undertaking the monumental task of creating the FIDo (now TID) software. Findings two and three were both related to the software programming, as the reviewer indicated that the County had the procedures in place both with the coding of the cases with the accounting system and a drop down option for the judges to write an explanation for variances. However the software did not print reports in the

manner sufficient for the IDER and the vouchers did not allow for the proper comment from the judge to be included. At the time of report issuance the software company was working on changes and enhancements but it was unclear when the software would be updated and if the updates would correct the issues. We are pleased to hear the software enhancements have been implemented and the county is satisfied that the issues for finding two and three have been resolved with the implementation.

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

BELL COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2013	2014	2015
Population Estimate	325,342	328,974	330,017
Juvenile Assigned Counsel	\$145,114	\$124,874	\$117,823
Capital Murder	\$9,250	\$1,275	\$88,729
Adult Non-Capital Felony Assigned Counsel	\$825,029	\$910,017	\$854,928
Adult Misdemeanor Assigned Counsel	\$1,129,077	\$1,170,875	\$1,300,605
Juvenile Appeals	\$4,966	\$0.00	\$6,767
Adult Felony Appeals	\$63,939	\$88,010	\$70,014
Adult Misdemeanor Appeals	\$2,191	\$3,521	\$825
Licensed Investigation	\$33,262	\$32,022	\$37,285
Expert Witness	\$12,679	\$17,201	\$27,566
Other Direct Litigation	\$42,872	\$11,049	\$45,654
Total Court Expenditures	\$2,358,382	\$2,358,845	\$2,550,198
Administrative Expenditures	\$86,367	\$86,367	\$94,477
Funds Paid by Participating County to Regional Program	N/A	N/A	N/A
Total Public Defender Expenditures	\$0.00	\$0.00	\$0.00
Total Court and Administrative Expenditures	\$2,444,749	\$2,445,212	\$2,644,676
Formula Grant Disbursement	\$239,877	\$431,004	\$266,571
Discretionary Disbursement	\$181,440	\$34,000	\$759,400
Reimbursement of Attorney Fees	\$445,627	\$440,027	\$491,959.
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	6,805	8,247	8,851

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Bell County				
Year	2013	2014	2015	Texas 2015
Population (Non-Census years are estimates)	325,342	328,974	330,017	27,213,214
Felony Charges Added (from OCA report)	1,853	1,921	1,804	271,744
Felony Cases Paid	1,681	1,764	1,701	193,560
% Felony Charges Defended with Appointed Counsel	91%	92%	94%	71 %
Felony Trial Court-Attorney Fees	\$834,280	\$911,292	\$943,657	\$110,036,405
Total Felony Court Expenditures	\$871,669	\$938,491	\$1,024,996	\$126,091,674
Misdemeanor Charges Added (from OCA report)	10,301	11,160	10,102	503,299
Misdemeanor Cases Paid	4,330	3,071	6,432	222,408
% Misdemeanor Charges Defended with Appointed Counsel	42%	28%	64%	44 %
Misdemeanor Trial Court Attorney Fees	\$1,219,078	\$1,170,875	\$1,300,605	\$39,141,724
Total Misdemeanor Court Expenditures	\$1,224,506	\$1,179,585	\$1,301,238	\$40,061,131
Juvenile Charges Added (from OCA report)	339	290	287	31,813
Juvenile Cases Paid	737	3372	669	41,068
Juvenile Attorney Fees	\$145,114	\$124,874	\$117,824	\$11,072,434
Total Juvenile Expenditures	\$183,064	\$148,619	\$145,492	\$11,747,908
Total Attorney Fees	\$2,269,569	\$2,298,573	\$2,439,693	\$165,942,108
Total ID Expenditures	\$2,444,749	\$2,445,212	\$2,644,676	\$238,029,838
Increase in Total Expenditures over Baseline	202%	202%	227%	168%
Total ID Expenditures per Population	\$7.51	\$7.43	\$8.01	\$8.75
Commission Formula Grant Disbursement	\$239,877	\$431,004	\$266,571	\$23,931,689
Cost Recouped from Defendants	\$445,627	\$440,027	\$491,959	\$11,530,419

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
- FY2015 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

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Honorable Gordon G. Adams
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