



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

**Caprock Regional Public Defender Office,
Texas Tech University**

Discretionary Grant Fiscal Review

March 27, 2018

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (Commission) conducted the discretionary grant fiscal desk review for the Caprock Regional Public Defender Office (CRPDO) from August 14, 2017 through December 21, 2017. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Commission discretionary grant. The review covered the period of October 1, 2015 to August 31, 2017.

SUMMARY OF FINDINGS

- Program income was not applied to program expenditures prior to submitting grant expenditure reports to the Commission

OBJECTIVE

The objectives of this review were to:

- determine whether grant funds were used for authorized purposes in compliance with applicable laws, regulations, and the provisions of the grant;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns on the indigent defense program requirements.

SCOPE

The Caprock Regional Public Defender Office income and expenditures were reviewed to ensure compliance with applicable laws, regulations, and the provisions of the grants provided for FY2016 and FY2017. Records provided by the Texas Tech University Accounting Office were reviewed. Compliance with other statutory indigent defense program requirements was not included in this review.

METHODOLOGY

To accomplish the objectives, the fiscal monitor asked questions of the Texas Tech University accounting office and the program administrator. The fiscal monitor reviewed:

- the general ledger transactions for the grant provided by the Texas Tech University accounting office;
- random samples of paid expenditures;
- any applicable contracts; and
- grant expenditure reports submitted to TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

CRPDO Background

The Caprock Regional Public Defender Office (CRPDO) was established in 2011 with a multi-year discretionary grant award from the Commission to Dickens County. Dickens County then contracted with Texas Tech University School of Law to operate the program. Dickens County executed interlocal agreements with all the counties participating in the regional program. The program was financed through a combination of Commission grant funds and county participation fees.

Under the agreement with Texas Tech University, the CRPDO assigns qualified 3rd year law students to represent clients under the supervision of the Chief Defender. In addition to bolstering the public defender's capacity to provide services, this unique program helps to prepare new attorneys to meet the indigent defense needs of the community.

The public defender is qualified to accept misdemeanor, juvenile, and felony cases. Upon the request of the local judiciary, the Commission expanded the scope of the program to allow the public defender to accept appeals appointments also. The geographic distance between the counties in the region is a factor that was considered in the program's design. In addition to a significant amount of travel, the public defender established a videoconferencing system to ensure that attorneys maintain regular contact with clients.

In 2015 the Texas Legislature amended Section 79.037, Government Code to allow the Commission:

“to assist a county [counties] in providing indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this section to one or more of the following entities: the county; a law school's legal clinic or program that provides indigent defense services in the county; and a regional public defender that meets the requirements of Subsection (e) and provides indigent defense services in the county.”

Beginning FY2016, under this new legislative authority, the Commission awarded a multi-year grant directly to Texas Tech University to operate the CRPDO. Counties now pay CRPDO a flat rate per case. These payments are considered program income and must be applied toward the program's operating expenses. In FY2017 ten counties utilized CRPDO for appointments of counsel.

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.”

Discretionary Grant

The Commission awarded Texas Tech University discretionary grants of up to \$200,000 for both FY2016 and FY2017 to reimburse eligible CRPDO program expenditures. The Commission disbursed \$185,366.12 under the FY2016 award. In FY2017 the award was adjusted per Texas Tech’s request to provide eleven months of funding ending August 31 in order to coincide with the University’s fiscal year. Total reported program expenditures for the eleven months ending August 31, 2017 were \$172,422.68. On the final quarterly expenditure report for FY 2017, program income of \$32,400.20 was applied to expenditures. The Commission disbursed a total of \$140,022.48 under the FY 2017 award, equivalent to the balance of the program cost after applying program income.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

The Uniform Grant Management Standards (UGMS) defines program income as income from “fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds, where authorized.”

UGMS also indicates that program income shall be deducted from allowable cost to determine the net allowable cost which in turn will be reimbursed from grant funds.

“1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the federal or state agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the federal or state agency and grantee contributions rather than to increase the funds committed to the project.”

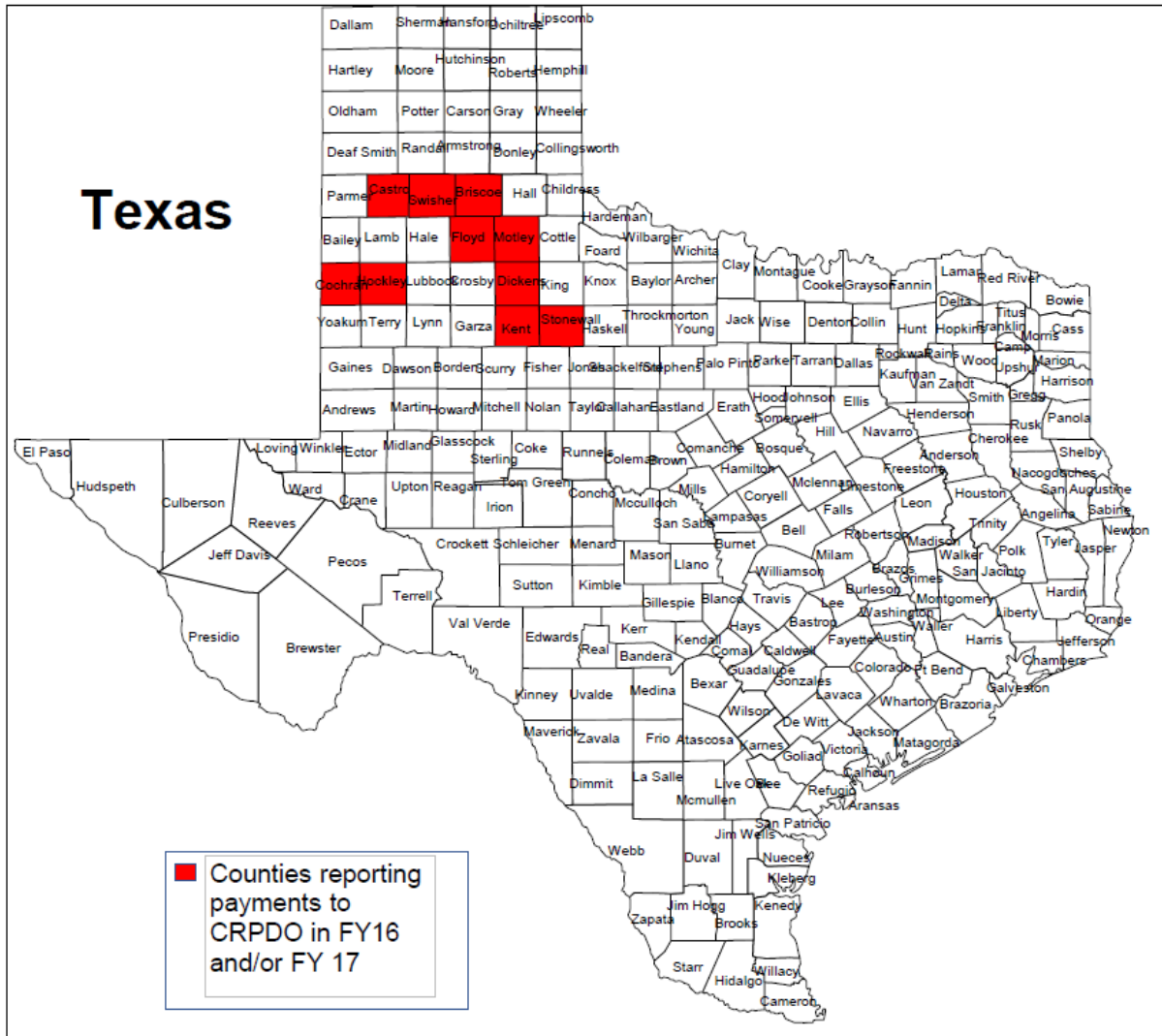
The payments that the participating counties submit to Texas Tech University for the cases handled by the CRPDO are considered program income. These payments should be utilized to offset the expenditures of the CRPDO prior to requesting grant funds from the Commission.

As the CRPDO structure shifted from Dickens County administering the grant and county contributions to the Commission reimbursing Texas Tech University directly, the payments from counties should have been tracked as program income and routinely applied toward program expenses before seeking reimbursement under the grant. The University maintained the receipt of the payments from counties in a separate general ledger and reported to the Commission quarterly the amounts received. However, the amounts received were not applied to offset the cost of the program in the quarterly grant expenditure reports in FY2016 and the first three quarters of FY2017. The fourth quarter grant expenditure report for FY2017 for the first time applied most of the accumulated program income from FY2016 through FY2017 to offset program costs. A carryforward amount of \$3,656.08 in program income will be allowed to apply to FY2018 first quarter expenditures.

Because this issue has been identified and the University has begun to offset the program income against the expenditures, the fiscal monitor considers the issue resolved and no additional written Corrective Action Plan (CAP) is necessary. Future quarterly grant expenditure reports should continue to apply program income to offset program costs prior to requesting reimbursement under the grant.

APPENDICES

APPENDIX A – MAP OF COUNTIES UTILIZING CRPDO



Payments noted as received for Program Income

APPENDIX B – CRITERIA

Criteria

- Uniform Grant Management Standards
- Texas Government Code, Section 71, 72 and 79
- Texas Government Code, Section 771 - Interagency Cooperation Act
- Texas Administrative Code - Title 1, Part 8, Chapter 173 and 174

APPENDIX C – DISTRIBUTION LIST

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