



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Lamb County, Texas**

**FY 2016 Indigent Defense Expenses**

**Final Report**

**September 6, 2018**

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## EXECUTIVE SUMMARY

Lamb County's fiscal desk monitoring began on October 24, 2017. Follow-up email exchanges continued through December 18, 2017 to complete the record review. 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 period of October 1, 2015 to September 30, 2016 (FY2016) was reviewed for this fiscal desk monitoring review.

### SUMMARY OF FINDINGS

- Attorney fee vouchers did not comply with Article 26.05(c)'s itemization requirement.
- 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.
- Records are not maintained to verify attorney qualifications to receive appointments.

### 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 fiscal policies and procedures relating to indigent defense services;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns on 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 FY2016. Records provided by the Lamb County auditor's office were reviewed. This review did not include compliance with other statutory indigent defense program requirements.

### METHODOLOGY

To accomplish the objectives, the fiscal monitor examined information provided by the County Auditor. The fiscal monitor reviewed:

- random samples of paid attorney fee vouchers;
- general ledger transactions;
- the Indigent Defense Expenditure Report;
- attorney fee schedule;
- attorney appointment list;
- attorney applications;
- attorney criminal and juvenile continuing legal education training documentation;
- any applicable contracts; and
- the county's indigent defense plan filed with TIDC.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Lamb County was created in 1876 from a portion of Bexar County and organized in 1908. Lamb County is in west Texas and is named after George A. Lamb, a Texian soldier who died at the Battle of San Jacinto. The county seat is Littlefield. Lamb County serves an estimated population of 13,100 and occupies an area of 1,018 square miles, of which 1.5 square miles is water. The neighboring counties are Castro, Hale, Hockley, Bailey, Parmer, Lubbock and Cochran. The county is served by the 154<sup>th</sup> District Court and the 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 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 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 2016 on-line formula grant application to assist in the provision of indigent defense services. Lamb County met the formula grant eligibility requirements and was awarded \$16,333 for FY 2016.

### Discretionary Grant

Lamb County did not apply for a discretionary grant for FY 2016; therefore, no discretionary grant funds were reviewed.

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

Attorney fee vouchers did not comply with Article 26.05(c)'s itemization requirement.

The Texas 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 or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. 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....

Seventeen of 41 attorney fee vouchers reviewed did not contain sufficient information to comply with CCP Article 26.05(c) regarding itemization of services. Supporting records for five payments from the juvenile court were not attorney-submitted vouchers, but were each called an "Order Compensating Appointed Counsel" signed by the judge. Twelve attorney fee vouchers for the criminal courts did not provide any description of the services performed and did not indicate an amount requested.

Two vouchers were itemized with work performed and a request for a specific amount; however, for each of these vouchers, the judge authorized payment of a lower amount. The judge did not provide a written explanation for the variance between the amount requested and the amount approved as required by CCP Article 26.05(c).

Twenty-two attorney fee vouchers did not request an amount to be compensated. Of these 22 vouchers, 14 only indicated that a flat fee was requested. The remaining eight vouchers listed only a description of the services the attorney provided with no amount requested, nor request for a flat fee.

### **Recommendation:**

CCP Article 26.05(c) requires that attorneys submit a form itemizing the services performed. It also requires that, when a judge disapproves a requested amount, he or she should make a written finding stating both the approved amount and the reason for approving a different amount.

TIDC and Lamb County should work together to find a way for Lamb County to comply with 26.05(c).

### **Lamb County Action Plan**

*The Judges will review and adjust current procedures for filling out attorney fee vouchers.*

**Contact person(s):** *Gina Jones*

**Completion date:** *8/16/18*

## **Finding Two**

Twenty-three of 41 attorney fee vouchers reviewed did not appear to be paid in accordance with the published fee schedule as required by CCP Article 26.05(b). Attorneys do not routinely request a specific amount on their submitted vouchers. Of the 41 vouchers reviewed, two requested a specific amount to be paid. It appears that the judges are authorizing the amount to be paid, but the amounts authorized do not always correspond with the published fee schedule.

The published fee schedule indicates a flat rate of \$300.00 will be paid for 3<sup>rd</sup> degree and state jail felony cases, while \$350.00 will be paid for 1<sup>st</sup> & 2<sup>nd</sup> degree felony cases. Fourteen vouchers for felony cases were paid a \$330.00 flat rate. One felony case was paid a flat rate of \$380.00 and another was paid \$25.00. The fee schedule also indicates that if an attorney works on multiple cases for a defendant that \$75.00 will be paid for each additional case. One voucher listed three cases, and the attorney was paid \$100.00 for each case.

One of the juvenile court orders was to compensate the attorney \$100.00 for a “Waiver of Detention” hearing, which is not listed on the fee schedule. The fee schedule indicates that an attorney’s appearance at a detention hearing will be paid \$125.00.

Additionally, the published fee schedule indicates that the flat rate for a misdemeanor case is \$250.00. Two county court vouchers reviewed listed one case each and were compensated at a flat rate of \$125.00 each. Another voucher reviewed was compensated \$150.00 for a single case and two others were compensated \$200.00 each.

The attorney fee voucher form lists the various levels of cases for the attorney to select when completing the voucher, such as felony or misdemeanor. However, the felony levels are not provided for the attorney to select. Because the fee schedule authorizes two separate flat fee amounts based on the level of felony, information about the degree of the felony is required to determine the amount that should be billed and paid.

### **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). If the fee schedule continues to include separate amounts for different levels of felonies, the attorney fee voucher form should be updated to list the various degrees of a felony, so the attorney can provide that information. If a voucher is intended to claim a flat fee, attorneys must request a specific amount to be paid on the voucher or include sufficient detail on the voucher to make clear the amount from the fee schedule that is requested.

### **Lamb County Action Plan**

*The Judges will review and republish fee schedule and make sure correct amounts are paid. If there are differences, they will be noted.*

**Contact person(s):** Gina Jones

**Completion date:** 8/16/18

### **Finding Three**

The County paid attorneys in FY 2016 for indigent defense representation without current validation of eligibility of those attorneys; therefore, Lamb County may have paid attorneys when they were not eligible to receive payments.

The County did not maintain attorney applications or provide supporting documentation that attorneys were current on their annual continuing legal education (CLE) requirements.

CCP Article 26.04 outlines procedures for appointing counsel and Title 1, Texas Administrative Code (TAC) rule §174 outline the minimum CLE requirements. Both rules are included in Lamb County's indigent defense plans approved by the judges. The supporting documentation to show that these procedures were followed was not maintained. While these appointments potentially could have been made in accordance with TAC Rule §174.4 (Emergency Appointment), there were no records maintained to indicate that.

### **Recommendation:**

The county must implement procedures to verify that all attorneys included on the appointment list are eligible to receive appointments for indigent defense. Verification should include:

- ensuring a completed application is on file for each attorney on the list;
- verifying each attorney has met the current CLE requirements; and
- documenting the offense levels for which each attorney is qualified.

As changes to the list are made throughout the year, an updated list should be provided to the auditor's office. The county auditor should verify that each attorney receiving payment for services is on the list and meets requirements.

### **Lamb County Action Plan**

*The Judges are creating a central location for attorneys to apply to be appointed and to have the attorneys certify their hours annually.*

**Contact person(s):** *Gina Jones*

**Completion date:** *8/16/18*

# APPENDICES



## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>LAMB COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Population Estimate	13,609	13,332	13,100
Juvenile Assigned Counsel	\$4,500	\$4,200	\$5,600
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$52,148	\$60,410	\$63,115
Adult Misdemeanor Assigned Counsel	\$18,270	\$25,295	\$21,485
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$0.00	\$1,500	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$27	\$0.00
Expert Witness	\$19,200	\$12,289	\$0.00
Other Direct Litigation	\$0.00	\$0.00	\$0.00
Total Court Expenditures	\$94,118	\$103,721	\$90,200
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$6,666	\$6,666	\$3,617
Total Public Defender Expenditures	\$0.00	\$0.00	\$0.00
Total Court and Administrative Expenditures	\$100,784	\$110,387	\$93,817
Formula Grant Disbursement	\$20,914	\$16,345	\$16,333
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$8,099	\$7,251	\$2,475
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	210	268	268

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Lamb County</b>				
<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Texas 2016</b>
Population (Non-Census years are estimates)	13,609	13,332	13,100	27,725,192
Felony Charges Added (from OCA report)	221	236	165	276,879
Felony Cases Paid	122	153	163	200,580
% Felony Charges Defended with Appointed Counsel	55%	65%	99%	72%
Felony Trial Court-Attorney Fees	\$52,148	\$60,410	\$63,115	\$115,192,600
Total Felony Court Expenditures	\$71,348	\$72,326	\$63,115	\$131,727,198
Misdemeanor Charges Added (from OCA report)	260	313	149	481,253
Misdemeanor Cases Paid	77	100	92	214,674
% Misdemeanor Charges Defended with Appointed Counsel	30%	32%	62%	45%
Misdemeanor Trial Court Attorney Fees	\$18,270	\$25,295	\$21,485	\$40,245,051
Total Misdemeanor Court Expenditures	\$18,270	\$25,295	\$21,485	\$41,003,480
Juvenile Charges Added (from OCA report)	10	16	18	27,307
Juvenile Cases Paid	11	14	13	41,989
Juvenile Attorney Fees	\$4,500	\$4,200	\$5,600	\$11,119,664
Total Juvenile Expenditures	\$4,500	\$4,600	\$5,600	\$11,424,425
Total Attorney Fees	\$74,918	\$91,405	\$90,200	\$172,232,454
Total ID Expenditures	\$100,784	\$110,387	\$93,817	\$247,730,647
Increase in Total Expenditures over Baseline	186%	214%	167%	179%
Total ID Expenditures per Population	\$7.41	\$8.28	\$7.16	\$8.94
Commission Formula Grant Disbursement	\$20,914	\$16,345	\$16,333	\$25,056,873
Cost Recouped from Defendants	\$8,099	\$7,251	\$2,475	\$11,055,035

*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
- FY2016 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/48321/fy16-ider-manual.pdf>

## APPENDIX C – DISTRIBUTION LIST

Honorable James M. DeLoach  
Constitutional County Judge  
Lamb County  
100 E. 6<sup>th</sup> St., Room 101  
Littlefield, TX 79339

Honorable Felix Klein  
Local Administrative District Court  
100 E. 6<sup>th</sup> St., Room 211  
Littlefield, TX 79339

Ms. Gina Jones  
County Auditor  
100 E. 6<sup>th</sup> St., Room B09  
Littlefield, TX 79339

Mr. Geoff Burkhart  
Executive Director, Texas Indigent Defense Commission  
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Austin, TX 78701

Mr. Wesley Shackelford  
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