



**TEXAS INDIGENT DEFENSE
COMMISSION**

Fiscal Monitoring Report

Concho County, Texas

FY 2015 Indigent Defense Expenses

Final Report

February 28, 2017

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
Summary of Findings.....	3
Objective.....	3
Scope.....	3
Methodology.....	3
DETAILED REPORT	4
BACKGROUND INFORMATION	4
County Background	4
Commission Background.....	4
Formula Grant.....	4
Discretionary Grant.....	4
DETAILED FINDINGS AND RECOMMENDATIONS.....	5
APPENDIXES	7
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT	8
APPENDIX B – CRITERIA.....	10
APPENDIX C – DISTRIBUTION LIST.....	11

EXECUTIVE SUMMARY

Concho County's fiscal monitoring desk review began on January 29, 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 as part of the fiscal monitoring desk review process.

Summary of Findings

- The FY 2015 Indigent Defense Expense Report (IDER) submitted in accordance with Texas Government Code Section 79.036(e) was not supported by the financial data provided.
- Some payments to attorneys do not appear to be made in accordance with the published fee schedule as required by Article 26.05 of Texas Code of Criminal Procedure.

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 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 FY2015. Records provided by the Concho County Treasurer's Office were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor talked with the county treasurer, the county judge, and the district judge administrator. The fiscal monitor reviewed:

- 100% of paid attorney fee vouchers;
- general ledger transactions provided by the Concho County Treasurer'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; and
- the county's local indigent defense plan.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Concho County is located on the Edwards Plateau in the region of west-central Texas. The County occupies an area of 994 square miles, and serves an estimated population of 4,185. The County was founded in 1858 and later organized in 1879. Concho County is a political subdivision of the State of Texas. It is named for the Concho River. Neighboring counties are Runnels, Coleman, McCulloch, Menard and Tom Green.

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. Concho County met the formula grant eligibility requirements and was awarded \$8,888.00 for FY 2015.

Discretionary Grant

Concho County did not apply for a discretionary grant for FY 2015; therefore no discretionary grant funds were reviewed.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Under Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners' court) must annually prepare and send indigent defense data to the Commission. This data is to include the total expenses for cases in which an attorney was appointed for an indigent defendant or indigent juvenile in each district court, county court, statutory county court, and appellate court on criminal matters. Since FY2014, the financial data reports expanded to include attorney-level information. Section 79.036(a-1) of the Texas Government Code states "(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j) (4), Code of Criminal Procedure."

Concho County prepared and submitted the FY 2015 Indigent Defense Expense Report (IDER) in accordance with Texas Government Code Section 79.036(e). However it was noted that the amounts paid to attorneys based on the general ledger did not match up with the new attorney detail report. The overall payment amount was the same, however there were discrepancies as to which attorney received which amount and the case counts did not match up. One juvenile case was included as an adult felony. Two attorneys had more cases listed on the report than the vouchers indicated. And one attorney had fewer cases listed with an overall over reporting of one case.

Recommendation:

Concho County should review processes for preparing the IDER and develop double-check procedures to prevent errors in the future.

County Response

We paid and logged to the information that we were provided within the Treasurer's office.

Concho County Action Plan

Concho County will take more care and caution while reviewing the cases that are received. We will make sure of the attorneys involved in the cases are the ones being reported as paid for those cases.

Contact person(s): Shawn L. Walston, Concho County Treasurer

Completion date: 01/20/2017

Finding Two

Four vouchers out of the forty (40) attorney fee vouchers reviewed did not appear to be made in accordance with the published fee schedule as required by Code of Criminal Procedure (CCP) Article 26.05 (c). The attorneys for each of these submitted vouchers requested the amount that was paid however, one voucher listed two cases and was paid the amount for one case. A second voucher listed one case and was paid the amount as if he handled two cases. The remaining two cases were listed as juvenile cases and each attorney requested \$50.00 which is not listed on the published fees schedule. The juvenile court fee schedule appears to be a previous version of a district court fee schedule.

Recommendation:

The payment amounts requested, approved and authorized for the vouchers in question are not supported by the published fee schedule. The County should review the processes in place and determine if additional procedures should be developed to verify reasons for variances when attorney's request payment amount that are not in compliance with the fee schedules. The judges should review the fee schedules and take formal action, if necessary, to adopt a new fee schedule that outlines its current payment practices in accordance with the requirements of CCP Article 26.05(c).

County Response

We paid according to the amounts provided by the District Judge. We did not question his discretion in changing the fee schedule.

Concho County Action Plan

We will continue to pay the amounts paid according to what the District Judge sets.

Contact person(s): *Shawn L. Walston, Concho County Treasurer*

Completion date: *01/20/2017*

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

CONCHO COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2013	2014	2015
Population Estimate	4,102	4,021	4,185
Juvenile Assigned Counsel	\$585.00	\$1,085.00	\$50.00
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$0.00	\$34,819.17	\$20,623.06
Adult Misdemeanor Assigned Counsel	\$30,573.80	\$0.00	\$875.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$0.00	\$0.00	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$0.00	\$0.00
Expert Witness	\$0.00	\$0.00	\$0.00
Other Direct Litigation	\$0.00	\$3,546.13	\$0.00
Total Court Expenditures	\$31,158.80	\$39,450.30	\$21,548.06
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$1,230.00	\$1,230.00	\$1,230.00
Total Court and Administrative Expenditures	\$32,388.80	\$40,680.30	\$22,778.06
Formula Grant Disbursement	\$7,497.00	\$10,601.00	\$8,888.00
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$0.00	\$0.00	\$0.00
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	34	42	41

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Concho County				
Year	2013	2014	2015	Texas 2015
Population (Non-Census years are estimates)	4,102	4,021	4,185	27,213,214
Felony Charges Added (from OCA report)	47	40	53	271,744
Felony Cases Paid	0	40	38	193,560
% Felony Charges Defended with Appointed Counsel	0%	100%	72%	71%
Felony Trial Court-Attorney Fees	\$0	\$34,819	\$20,623	\$110,036,405
Total Felony Court Expenditures	\$0	\$35,480	\$20,623	\$126,091,674
Misdemeanor Charges Added (from OCA report)	96	81	108	503,299
Misdemeanor Cases Paid	33	0	2	222,408
% Misdemeanor Charges Defended with Appointed Counsel	34%	0%	2%	44%
Misdemeanor Trial Court Attorney Fees	\$30,574	\$0	\$875	\$39,141,724
Total Misdemeanor Court Expenditures	\$30,574	\$0	\$875	\$40,061,131
Juvenile Charges Added (from OCA report)	3	0	2	31,813
Juvenile Cases Paid	1	2	1	41,068
Juvenile Attorney Fees	\$585	\$1,085	\$50	\$11,072,434
Total Juvenile Expenditures	\$585	\$3,970	\$50	\$11,747,908
Total Attorney Fees	\$31,159	\$35,904	\$21,548	\$165,942,108
Total ID Expenditures	\$32,389	\$40,680	\$22,778	\$238,029,838
Increase In Total Expenditures over Baseline	213%	293%	120%	168%
Total ID Expenditures per Population	\$7.90	\$10.12	\$5.44	\$8.75
Commission Formula Grant Disbursement	\$7,497	\$10,601	\$8,888	\$23,931,689

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

The Honorable David Dillard
Constitutional County Judge
P.O. Box 158
Paint Rock, TX 76866

The Honorable Garland Benton Woodward
119th District Court Judge
112 W Beauregard
San Angelo, TX 76903-5835

Ms. Shawn L. Walston
County Treasurer
P.O. Box 121
Paint Rock, TX 76866

Mr. James D. Bethke
Executive Director, Texas Indigent Defense Commission
209 W. 14th Street, Room 202
Austin, TX 78701

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

Mr. Edwin Colfax
Grant Program Manager, Texas Indigent Defense Commission
209 W. 14th Street, Room 202
Austin, TX 78701