



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Harrison County, Texas

FY 2018 Indigent Defense Expenses

Final Report

April 2, 2020

Table of Contents

EXECUTIVE SUMMARY	3
DETAILED REPORT	4
BACKGROUND INFORMATION	4
County Background	4
Commission Background.....	4
Formula Grant.....	4
DETAILED FINDINGS AND RECOMMENDATIONS	5
APPENDICES	8
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT.....	9
APPENDIX B – CRITERIA.....	11
APPENDIX C – DISTRIBUTION LIST	12

EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Harrison County on June 26-27, 2019. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of TIDC grants.

TIDC reviewed the expenditure period of October 1, 2017 through September 30, 2018 (FY 2018).

SUMMARY OF FINDINGS

The FY 2018 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) included unallowable general court expenses.

Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present on vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedure.

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 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 FY2018. The records reviewed were provided by the Harrison 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 two assistant county auditors, the County Auditor, and held a meeting with a team of County officials. The fiscal monitor reviewed

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

Harrison County was established by the Congress of the Republic of Texas in 1839 from parts of Shelby County, however the County was not organized until 1842. In 1846 the County was reduced in size to establish Panola and Upshur Counties. The County was named for Jonas Harrison, a lawyer and Texas revolutionary. The county seat is Marshall.

Harrison County serves an estimated population of 67,443 and occupies an area of 916 square miles, of which 16 square miles is water. The neighboring counties are Gregg, Marion, Panola, Rusk, and Upshur, as well as Caddo Parish in Louisiana. .

Harrison County is served by the 71st District Court, a County Court-at-Law and the Constitutional 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 (TIDC) effective September 1, 2011. TIDC 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 2018 indigent defense online grant application to assist in the provision of indigent defense services. Harrison County met the formula grant eligibility requirements and was awarded \$63,015.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Under Section §79.036(e) of the Texas Government Code, the county auditor or designated person 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. Harrison County prepared and submitted the FY 2018 Indigent Defense Expense Report (IDER) in accordance with Texas Government Code Section §79.036(e) however, the reported amounts were not supported by the financial data provided. Specifically, the County included some general court expenditures with the criminal indigent defense expenses in the FY 2018 IDER submitted under Texas Government Code Section §79.036 (e).

A mental health evaluation to determine competency to stand trial is typically a general court expense. The mental health examinations that are considered indigent defense expenses are those requested by the defense counsel where the results are shared exclusively with the defense team. No mental health evaluations requested by the judge or prosecuting attorney should be reported as indigent defense expenses. Support that the expense is for a mental health expert working for the defense under derivative attorney-client privilege to assist in the criminal defense of an indigent defendant must be documented is necessary to include the expenditure on the IDER. An order granting an *ex parte* defense motion requesting funds for a mental health defense expert is generally sufficient to establish eligibility as an indigent defense expenditure

None of the psychological evaluation vouchers requested for review included an *ex parte* motion to identify it as a defense related cost.

The cost to prepare a transcript for the defense attorney in connection with an appeal is an allowable cost for the IDER. However, the general costs for the court reporter to be in the courtroom and related personnel and administrative costs are general operational expenses of the court that are required regardless of whether the defendant is indigent. A voucher for travel expenses for a court reporter to attend a conference was included on the IDER.

Likewise, the cost of an interpreter to be present in the courtroom for a proceeding is an unallowable cost on the IDER, as the interpreter is necessary for the court to conduct the proceeding. A voucher for an interpreter to be present during a proceeding was included on the IDER.

These general court expenses are not eligible indigent defense expenditures and should not be included in the IDER. The IDER was overstated due to the inclusion of these ineligible costs.

The formula grant is calculated based on the reported IDER expenditures. The FY 2019 formula grant for Harrison County was not calculated accurately based on eligible expenditures. Please refer to the Indigent Defense Expenditure Report Procedure Manual: <http://www.tidc.texas.gov/media/58006/fy18-ider-manual.pdf>.

Recommendation:

The County must develop procedures to identify and record expenses for mental health experts that distinguish those requested by and for the exclusive use of defense counsel in preparation of a defense. Procedures must distinguish such expenses from examinations ordered by the court to determine competency to stand trial, which are considered general court expenditures.

The County must identify and report to TIDC the amount of the mental health costs included in the FY 2018 IDER that were not eligible based on the finding above.

The County should not include costs for court interpreters and routine and administrative costs associated with court reporters on the IDER. Interpretation costs may only be included when the interpreter is working exclusively for the defense outside of court proceedings. Costs associated with the preparation of a transcript for a defense attorney in connection with appellate representation are the only costs related to court reporters that are allowable on the IDER.

County Response

The County Auditor has discussed the findings with each judge.

Harrison County Action Plan

The fee voucher review process has been modified to separate the review of the fee vouchers for payment and the submission of the IDER.

Each assistant auditor has been trained to understand the eligible expenses under the grant guidelines and the required documentation. The voucher is not approved for payment unless all supporting documentation required is included in the request for payment.

The Assistant Auditor preparing the IDER will review each voucher to confirm supporting documentation included in the payment request and the submitted expense meets the grant guidelines.

Contact person(s): *Ms. Becky Haynes, County Auditor*

Completion date: *January 15, 2020*

Finding Two

Written explanations from judges for variances in amounts approved and amounts requested on attorney fee vouchers were not present as required by Article 26.05(c) of the Texas Code of Criminal Procedure.

Article 26.05(c) of the Code of Criminal Procedure (CCP) 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.”

Sixty-five attorney fee vouchers were reviewed, and the judges approved the attorney requested amount on all but one voucher. On that voucher, the judge approved an amount different than requested by the attorney; however, no explanation for the difference was provided.

Recommendation:

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

County Response

The County Auditor has discussed the findings with each judge.

Harrison County Action Plan

The accounts payable clerk responsible for submitting the attorney fee voucher and the assistant auditor responsible for reviewing the attorney fee vouchers for payment have received additional training. The training included review of the grant requirements.

The attorney voucher is not processed for payment unless all supporting documentation is included in the request. The Assistant Auditor preparing the IDER will review each voucher to confirm supporting explanation included in the payment request.

Contact person(s): *Ms. Becky Haynes*

Completion date: *January 15, 2020*

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

HARRISON COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2016	2017	2018
Population Estimate	68,636	68,849	67,443
Juvenile Assigned Counsel	\$80,103	\$70,650	\$61,096
Capital Murder	\$11,115	\$25,152	\$0
Adult Non-Capital Felony Assigned Counsel	\$334,385	\$328,373	\$293,449
Adult Misdemeanor Assigned Counsel	\$200,241	\$210,610	\$206,965
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$18,619	\$10,613	\$40,816
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$12,829	\$57,529	\$24,342
Expert Witness	\$7,133	\$28,771	\$26,155
Other Direct Litigation	\$28,963	\$33,178	\$13,544
Total Court Expenditures	\$693,387	\$764,875	\$666,368
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
Total Public Defender Expenditures	NA	NA	NA
Total Court and Administrative Expenditures	\$693,387	\$764,875	\$666,368
Formula Grant Disbursement	\$68,615	\$84,719	\$63,015
Reimbursement of Attorney Fees	\$79,619	\$80,127	\$106,475
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	NA	NA	NA
Total Assigned Counsel Cases	1,259	1,165	1,208

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Harrison County				
Year	2016	2017	2018	Texas 2018
Population (Non-Census years are estimates)	68,636	68,849	67,443	28,525,596
Felony Charges Added (from OCA report)	681	756	680	288,260
Felony Cases Paid	506	436	466	215,240
% Felony Charges Defended with Appointed Counsel	74%	58%	69%	75%
Felony Trial Court-Attorney Fees	\$345,500	\$353,525	\$293,449	\$127,990,245
Total Felony Court Expenditures	\$383,184	\$472,014	\$347,724	\$144,671,726
Misdemeanor Charges Added (from OCA report)	1,023	917	938	467,851
Misdemeanor Cases Paid	461	401	505	214,494
% Misdemeanor Charges Defended with Appointed Counsel	45%	44%	54%	46%
Misdemeanor Trial Court Attorney Fees	\$200,241	\$210,610	\$206,965	\$43,911,167
Total Misdemeanor Court Expenditures	\$203,460	\$210,610	\$214,312	\$44,786,546
Juvenile Charges Added (from OCA report)	22	31	39	28,970
Juvenile Cases Paid	287	322	222	41,578
Juvenile Attorney Fees	\$80,103	\$70,650	\$61,096	\$11,805,587
Total Juvenile Expenditures	\$80,385	\$71,638	\$61,096	\$12,312,690
Total Attorney Fees	\$644,462	\$645,397	\$602,326	\$189,152,540
Total ID Expenditures	\$693,387	\$764,875	\$666,368	\$276,229,545
Increase in Total Expenditures over Baseline	163%	190%	153%	211%
Total ID Expenditures per Population	\$10.10	\$11.11	\$9.88	\$9.68
Commission Formula Grant Disbursement	\$68,615	\$84,719	\$63,015	\$23,320,001
Cost Recouped from Defendants	\$79,619	\$80,127	\$106,475	\$10,281,678

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
- FY2018 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/58006/fy18-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

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