



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Lee County, Texas

FY 2017 & FY 2018 Indigent Defense Expenses

Final Report

June 13, 2019

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal desk monitoring review of Lee County. The review began on January 4, 2019 and follow-up email exchanges continued through February 25, 2019 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 TIDC grants.

TIDC reviewed both the expenditure period of October 1, 2016 through September 30, 2017 (FY 2017) and October 1, 2017 through September 30, 2018 (FY2018).

SUMMARY OF FINDINGS

- General court expenditures were included with the criminal indigent defense expenses in the FY 2017 and FY 2018 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e).
- Attorney CLE hours are not maintained to verify attorney eligibility 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 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 FY2017 and FY2018. The records reviewed were provided by the Lee 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 requested information from the County Auditor. The fiscal monitor reviewed

- Random samples of paid attorney fee vouchers;
- General ledger transactions provided by the Lee County auditor's office;
- IDER;
- Attorney fee schedule;
- Attorney appointment list;
- Attorney applications;
- Attorney criminal and juvenile continuing legal education documentation;
- Any applicable contracts; and
- The County's indigent defense plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Lee County was founded in 1874. The County is named for Confederate General Robert E. Lee. The County seat is Giddings. Lee County serves an estimated population of 3,640 and occupies an area of 634 square miles, of which 5.1 square miles is water. The neighboring counties are Bastrop, Burleson, Fayette, Milam, Washington, and Williamson Counties.

Lee County is served by the 21st and 335th District Courts and a 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 FY2017 and FY2018 indigent defense online grant application to assist in the provision of indigent defense services. Lee County met the formula grant eligibility requirements and was awarded \$24,769 for FY2017 and \$19,731 for FY2018.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Lee County included some general court expenditures with the criminal indigent defense expenses in both the FY 2017 and FY 2018 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e). These general court expenses are not eligible indigent defense expenditures and should not be included in the IDER.

TIDC reviewed six vouchers, three from each fiscal year, from the Expert Witness & Forensic Expenses account 10-435-405, constituting 100% of the expenditures in this category. All six vouchers appear, in part, to be for mental health evaluations to determine if the defendant is competent to stand trial. Vouchers for competency evaluations are considered general court expenditures that are ineligible to be reported on the IDER.

A request for 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 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.

The expenditures detailed above 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 ineligible costs. This could mean that the FY 2018 formula grant for Lee 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/57810/fy17-ider-manual.pdf>

Recommendation:

Lee County should develop procedures to identify and record expenses for mental health experts 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 expenses.

Lee County Action Plan

From this time forward, when preparing the annual Indigent Defense Expense Report, the Lee County Auditor will examine the motion, the court order and any other documentation supporting each mental evaluation invoice in order to determine whether it is a general court expense or a qualified indigent defense expenditure. In addition, documentation will be obtained to determine which party used the evaluation results.

Finding Two

Title 1, Texas Administrative Code (TAC) rule §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, CCP may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC rule §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides that an attorney is eligible if the attorney is board certified in criminal law or juvenile law.

The County could not document that attorneys assigned criminal cases had met the CLE requirements to be eligible for appointment. The County may have made ineligible payments to these attorneys. (TAC rule §174.4 does allow for emergency appointment when no attorney meeting the CLE requirements is available.)

Recommendation:

The County must implement a procedure to verify that all attorneys included on the current appointment list have met the current year’s CLE requirements.

Lee County Action Plan

From this time forward, the District Court Judges will obtain certificates of completed CLE from the attorneys on an annual basis. In turn, copies of the CLE documentation will be filed with the District Clerk's Office. The same applies for the County Court. Documentation will be obtained from indigent defense attorneys that do not represent clients in the District Court. The documentation attained will be filed with the County Clerk's Office. The County Auditor will include in the annual report preparation checklist a procedure to obtain the CLE documentation from the District Clerk and the County Clerk. The County Auditor will examine the information obtained to determine if the minimum education requirements were met and if the information covers all attorneys appointed for the Fiscal Year.

Other Observation

For the two years under review, the County appeared to be operating the district courts as a contract system with three attorneys but did not execute written contracts. However, before the review was initiated, the County had executed contracts with these attorneys. Therefore, a finding has not been issued. TIDC is working with Lee County on the caseload and case type specified in the contract.

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

LEE COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2016	2017	2018
Population Estimate	17,198	17,060	17,060
Juvenile Assigned Counsel	\$18,330	\$18,185	\$21,233
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$117,045	\$131,213	\$118,812
Adult Misdemeanor Assigned Counsel	\$17,500	\$35,678	\$25,750
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$2,700	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$4,029	\$1,470	\$3,509
Expert Witness	\$9,450	\$3,000	\$4,500
Other Direct Litigation	\$0	\$0	\$0
Total Court Expenditures	\$166,354	\$192,247	\$173,804
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$4,076	\$4,076	\$6,161
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$170,429	\$196,323	\$179,965
Formula Grant Disbursement	\$20,726	\$24,769	\$19,731
Reimbursement of Attorney Fees	\$8,631	\$15,565	\$16,127
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	\$0	\$0	\$0
Total Assigned Counsel Cases	353	545	478

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Lee County				
Year	2016	2017	2018	Texas 2018
Population (Non-Census years are estimates)	17,198	17,060	17,060	28,059,337
Felony Charges Added (from OCA report)	314	298	369	288,260
Felony Cases Paid	216	291	282	215,240
% Felony Charges Defended with Appointed Counsel	69%	98%	76%	75%
Felony Trial Court-Attorney Fees	\$117,045	\$131,213	\$118,812	\$127,990,245
Total Felony Court Expenditures	\$130,524	\$135,683	\$126,822	\$144,671,726
Misdemeanor Charges Added (from OCA report)	405	455	448	467,851
Misdemeanor Cases Paid	95	197	140	214,494
% Misdemeanor Charges Defended with Appointed Counsel	23%	43%	31%	46%
Misdemeanor Trial Court Attorney Fees	\$17,500	\$35,678	\$25,750	\$43,911,167
Total Misdemeanor Court Expenditures	\$17,500	\$35,678	\$25,750	\$44,786,546
Juvenile Charges Added (from OCA report)	29	28	17	28,970
Juvenile Cases Paid	42	56	56	41,578
Juvenile Attorney Fees	\$18,330	\$18,185	\$21,233	\$11,805,587
Total Juvenile Expenditures	\$18,330	\$18,185	\$21,233	\$12,312,690
Total Attorney Fees	\$152,875	\$187,777	\$165,795	\$189,152,540
Total ID Expenditures	\$170,429	\$196,323	\$179,965	\$276,229,545
Increase in Total Expenditures over Baseline	143%	180%	156%	211%
Total ID Expenditures per Population	\$9.91	\$11.51	\$10.55	\$9.84
Commission Formula Grant Disbursement	\$20,726	\$24,769	\$19,731	\$23,320,001
Cost Recouped from Defendants	\$8,631	\$15,565	\$16,128	\$10,281,678

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
- FY2017 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/57810/fy17-ider-manual.pdf>
- 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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