



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Maverick County, Texas**

**FY 2016 Indigent Defense Expenses**

**Final Report**

**January 25, 2018**

# Table of Contents

EXECUTIVE SUMMARY .....	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 .....	8
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT.....	9
APPENDIX B – CRITERIA.....	11
APPENDIX C – DISTRIBUTION LIST .....	12

## EXECUTIVE SUMMARY

Maverick County's on-site fiscal monitoring visit was conducted July 18-19, 2017. 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, 2015 to September 30, 2016 (FY2016) was reviewed during the fiscal monitoring visit.

### SUMMARY OF FINDINGS

- General court expenditures were included with the criminal indigent defense expenses in the FY 2016 Indigent Defense Expenditure Report (IDER) submitted under Texas Government Code Section §79.036 (e).
- The FY 2016 IDER was not prepared in the form and manner prescribed by the Commission as required under Section §79.036(e) of the Texas Government Code.

### 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

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 Maverick County Auditor's 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 met with the County Auditor and an Assistant County Auditor. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- general ledger transactions provided by the Maverick County Auditor's Office;
- IDER;
- attorney fee schedule;
- any applicable contracts; and
- the county's local indigent defense plan.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Maverick County was created in 1856 from Kinney County and was organized in 1871. The county is named for Samuel Maverick, a cattleman and state legislator. The county seat is Eagle Pass. Maverick County serves an estimated population of 57,666 and occupies an area of 1,292 square miles, of which 13 square miles is water. Maverick County is located in Southwest Texas and is bordered to the East by Mexico. The neighboring Texas counties are Dimmit, Kinney, Uvalde, Webb and Zavala.

### Commission Background

In January 2002, the 77<sup>th</sup> Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82<sup>nd</sup> 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 2016 indigent defense on-line grant application to assist in the provision of indigent defense services. Maverick County met the formula grant eligibility requirements and was awarded \$31,864 for FY 2016.

### Discretionary Grant

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

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

Maverick County included general court expenditures with the criminal indigent defense expenses in the FY 2016 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e). Three vouchers from the expert witness, investigation and other direct litigation expense categories were reviewed. Of these two were for mental health evaluations. However, one of the two vouchers indicated that the evaluation was performed to determine if defendant was competent to stand trial.

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 in order 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 2016 formula grant for Maverick 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/48321/fy16-ider-manual.pdf>.

### **Recommendation:**

Procedures to identify and record expenses for mental health expert expenses requested by the appointed defense counsel for the exclusive use of defense counsel in preparation of a defense should be developed. Procedures must distinguish such expenses from examinations ordered by the court to determine competency to stand trial, which are considered general court expenses.

### **County Response:**

### **Maverick County Action Plan**

*The auditor's office will require from all the courts to attach the court order along with the purchase order and the invoice, so we can verify that the expenses from mental health examinations qualify for IDER.*

**Contact person(s):** *Sandra Watkins*

**Completion date:** *12-12-2017*

## **Finding Two**

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:

- (1) in each district, county, statutory county, and appellate court;
- (2) in cases for which a private attorney is appointed for an indigent defendant;
- (3) in cases for which a public defender is appointed for an indigent defendant;
- (4) in cases for which counsel is appointed for an indigent juvenile under Section [51.10\(f\)](#), Family Code; and
- (5) for investigation expenses, expert witness expenses, or other litigation expenses.

Maverick County prepared and submitted the FY 2016 Indigent Defense Expense Report (IDER) in accordance with Texas Government Code Section §79.036(e). However, errors were found in the reporting. Thirty-five (35) attorney fee vouchers were reviewed during the review process.

The review of the thirty-five attorney fee vouchers indicated that nine vouchers listed multiple cases. However, it appears that each attorney's voucher payment is recorded as a single disposed case, therefore, underreporting the number of cases disposed.

When attorneys submit their fee vouchers, in addition to the attorney fees, some attorneys request reimbursement for other expenditures such as mileage, etc. These reimbursements are paid to the attorney; however, they are in addition to the cost of the attorney fees and should be classified as other litigation costs. The review revealed that these reimbursements are included as attorney fees on the IDER, which overstates attorney fees and understates other litigation expense.

One voucher was found to be an expenditure for an appeal case, however it was listed as other litigation for a non-capital felony. This should be listed as other litigation cost for a felony appeal level case. This reporting error misrepresents the cost for various levels of cases but does not affect the overall cost spent on indigent defense.

### **Recommendation:**

The vouchers submitted by the attorney should list all the cases disposed. The county should implement a procedure to identify the number of cases per voucher on an ongoing basis. One example could be to list the number of cases in the description area of the general ledger.

If possible, it is suggested that the county include a separate code for attorney expense reimbursements within the general ledger so that reimbursements can be recorded separately and not included as attorney fees.

Procedures to identify appeal cases should be developed. Appropriate county personnel should be trained to identify an appeal level case.

**County Response:**

**Maverick County Action Plan**

*The auditor's office will require to have one Purchase Order per case and for the courts to specify in the purchase order the amount for attorney fees and the amount for other litigation costs. The Auditor's Department will open a new General Ledger Account named "Indigent Other Litigations Costs" so that the expenses can be properly recorded.*

**Contact person(s):** *Sandra Watkins*

**Completion date:** *12-12-2017*

# APPENDICES



## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>MAVERICK COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Population Estimate	56,138	56,778	57,666
Juvenile Assigned Counsel	\$7,082	\$6,342	\$6,718
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$54,073	\$36,839	\$45,620
Adult Misdemeanor Assigned Counsel	\$3,750	\$15,082	\$15,507
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$0	\$0	\$9,288
Other Direct Litigation	\$0	\$0	\$8,267
Total Court Expenditures	\$64,906	\$58,263	\$85,399
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$64,906	\$58,263	\$85,399
Formula Grant Disbursement	\$48,886	\$32,691	\$31,864
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$10,812	\$10,388	\$9,943
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Assigned Counsel Cases	187	149	157

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Maverick County</b>				
<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Texas 2016</b>
Population (Non-Census years are estimates)	56,138	56,778	57,666	27,725,192
Felony Charges Added (from OCA report)	NR	0	131	276,879
Felony Cases Paid	149	102	107	200,580
% Felony Charges Defended with Appointed Counsel			82%	72%
Felony Trial Court-Attorney Fees	\$54,073	\$36,839	\$45,620	\$115,192,600
Total Felony Court Expenditures	\$54,073	\$36,839	\$63,175	\$131,727,198
Misdemeanor Charges Added (from OCA report)	571	726	1,168	481,253
Misdemeanor Cases Paid	14	30	33	214,674
% Misdemeanor Charges Defended with Appointed Counsel	2%	4%	3%	45%
Misdemeanor Trial Court Attorney Fees	\$3,750	\$15,082	\$15,507	\$40,245,051
Total Misdemeanor Court Expenditures	\$3,750	\$15,082	\$15,507	\$41,003,480
Juvenile Charges Added (from OCA report)	NR	0	24	27,307
Juvenile Cases Paid	24	17	17	41,989
Juvenile Attorney Fees	\$7,082	\$6,342	\$6,718	\$11,119,664
Total Juvenile Expenditures	\$7,082	\$6,342	\$6,718	\$11,424,425
Total Attorney Fees	\$64,906	\$58,263	\$67,845	\$172,232,454
Total ID Expenditures	\$64,906	\$58,263	\$85	\$247,730,647
Increase in Total Expenditures over Baseline	539%	474%	741%	179%
Total ID Expenditures per Population	\$1.16	\$1.03	\$1.48	\$8.94
Commission Formula Grant Disbursement	\$48,886	\$32,691	\$31,864	\$25,056,873
Cost Recouped from Defendants	\$10,812	\$10,388	\$9,943	\$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 David R. Saucedo.  
Constitutional County Judge  
Maverick County  
500 Quarry Street, Suite 3  
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Honorable Amado Abascal, III  
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