



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Galveston County, Texas**

**FY2021 Indigent Defense Expenses**

**Final Report**

**August 17, 2023**

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# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of Galveston County. Initial notice was given to Judge Henry on January 28, 2022. Follow-up communication with the County Auditor regarding a planned site visit March 29<sup>th</sup> and 30<sup>th</sup> led to the Auditor's request to postpone the visit due to work on an unrelated project with a March 31 deadline. TIDC emailed a request for information on April 8, 2022. Email exchanges continued until March 3, 2023. 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, 2020, through September 30, 2021 (FY2021).

## SUMMARY OF FINDINGS

The FY2021 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) included some unallowable general court expenditures.

## 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 FY2021. The records reviewed were provided by the Galveston 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 coordinated emails with the county auditor.

The fiscal monitor reviewed

- Random samples of paid attorney fees;
- General ledger transactions provided by the Galveston County auditor's office;
- Indigent Defense Expenditure Report (IDER);
- Attorney fee schedule;
- Any applicable contracts; and
- The County's local indigent defense plan filed with TIDC.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Galveston County was established under the Republic of Texas on May 15, 1838. The County was formed from parts of Harrisburg, Liberty and Brazoria Counties with organization taking place in 1839. Galveston County comprises three distinct areas: the mainland, the Bolivar Peninsula forming Galveston Bay, and Galveston Island. In 1783, a Spanish navigator surveyed the area and named the bay Galveston in honor of Bernardo de Galvez, a Spanish military leader and government official who supported the United States in the Revolutionary War.

The current population of Galveston County is estimated at 341,146, and the County seat is the City of Galveston. Galveston County occupies an area of 874 square miles, of which 378 square miles is covered by water. The County is bordered by Brazoria, Chambers, and Harris Counties, as well as the Gulf of Mexico.

Galveston County is served by six district courts, three county courts-at-law, and a juvenile 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's mission is to protect the right to counsel and improve indigent defense.

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 FY2021 indigent defense online grant application to assist in the provision of indigent defense services. Galveston County met the formula grant eligibility requirements and was awarded \$211,108 in formula grant award.

## 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. Galveston County prepared and submitted the FY2021 Indigent Defense Expenditure Report (IDER). However, the FY2021 IDER included some unallowable general court expenditures. The general court expenditures that were included were competency evaluations.

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 defense counsel where the results are shared exclusively with the defense team in order to prepare a defense. 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. An evaluation of competency to stand trial is not an eligible indigent defense expense, regardless of which party may initiate consideration of ordering such an evaluation.

Fifteen vouchers from the three categories on the IDER other than attorney fees were reviewed. Of these, six were for mental health evaluations. All six of the vouchers were marked that the bill was for either for “competency to stand trial,” “incompetency,” or “competency evaluation.” These six vouchers for competency evaluations are considered general court expenditures and are ineligible to be reported on the IDER.

The expenditures detailed above must 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 FY2021 formula grant for Galveston 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/8d98cc6722c9897/fy2021-ider-manual-final.pdf>

Prior to this fiscal monitoring review, TIDC conducted fiscal monitoring in Galveston County in 2016 and issued a report in June 2017. That report included a finding of unallowable expenses reported on the IDER, including, in part, evaluations of competency to stand trial.

In response to the June 2017 report, the County provided the following response:

*Support documentation provided by the courts for psychological evaluations, court reporter expenditures and other expenses other than attorney fees will provide evidence the expenditures were requested by the defense attorney. This support documentation will be included on or attached to the related voucher to clearly*

*designate if the expenditure should be included on the IDER or considered as a general court expenditure. All transactions to date for FY2017 have been reviewed to verify the requesting party to ensure only defense requested expenditures will be included on the FY2017 IDER. Beginning in FY2018, the general ledger accounts have been modified to separate indigent defense expenditures and general court expenditures.*

The clarification that may be needed here is that, even though a defense attorney may initiate consideration of an order to perform a competency evaluation, that is not the deciding factor that determines that it is an eligible defense cost. An evaluation of competency to stand trial is not an eligible indigent defense expense, regardless of which party may initiate consideration of ordering such an evaluation.

**Recommendations:**

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

**County Response**

*Prior to October 2021, the Psychological Evaluation expenses were paid out of Court Administration's Indigent Defense funds budget from the "Other Litigation Expenditures" object code. For the 2022 Indigent defense report, we moved the funding for that expense out of the Indigent Defense budget into the general departmental budget. Since that time, we have not submitted claims/invoices for these expenses from the Indigent Defense accounts.*

**Contact person(s):** *Randall Rice, County Auditor*

**Completion date:** *May 17, 2023*

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>GALVESTON COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Population Estimate	339,241	341,146	341,146
Juvenile Assigned Counsel	\$141,942	\$110,435	\$89,528
Capital Murder	\$96,097	\$0	\$22,386
Adult Non-Capital Felony Assigned Counsel	\$1,551,000	\$1,345,493	\$1,285,763
Adult Misdemeanor Assigned Counsel	\$521,354	\$397,993	\$431,281
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$68,974	\$76,980	\$58,661
Adult Misdemeanor Appeals	\$998	\$0	\$0
Licensed Investigation	\$35,592	\$37,132	\$22,326
Expert Witness	\$95,283	\$19,402	\$16,787
Other Direct Litigation	\$178,171	\$179,250	\$67,085
Total Court Expenditures	\$2,692,411	\$2,163,685	\$1,993,795
Administrative Expenditures	\$124,677	\$303,642	\$356,473
Public Defender Administrative Expenditures	NA	NA	\$169,781
Total of Limited Scope 15.17/Automatic Bail Review Hearing	NA	\$184,346	\$227,250
Funds Paid by Participating County to Regional Program	\$132,965	\$107,215	\$107,215
Total Court and Administrative Expenditures	\$2,950,054	\$2,574,543	\$2,627,264
Formula Grant Disbursement	\$234,623	\$245,128	\$211,108
Reimbursement of Attorney Fees	\$215,879	\$162,959	\$155,981
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Limited Scope 15.17/Automatic Bail Review Hearing cases	NA	2,274	3,253
Total Assigned Counsel Cases	9,098	5,600	5,367

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records



<b>Galveston County</b>				
<b>Year</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>Texas 2021</b>
Population (Non-Census years are estimates)	339,241	341,146	341,146	29,149,480
Felony Charges Disposed (from OCA report)	3,576	2,606	2,639	233,848
Felony Cases Paid	4,354	2,562	2,336	179,017
% Felony Charges Defended with Appointed Counsel	122%	98%	89%	77%
Felony Trial Court-Attorney Fees	\$1,647,098	\$1,345,493	\$1,308,149	\$117,687,277
Total Felony Court Expenditures	\$1,933,059	\$1,547,584	\$1,396,308	\$129,509,185
Misdemeanor Charges Disposed (from OCA report)	6,721	5,524	6,477	329,309
Misdemeanor Cases Paid	3,985	2,433	2,627	143,702
% Misdemeanor Charges Defended with Appointed Counsel	59%	44%	41%	44%
Misdemeanor Trial Court Attorney Fees	\$521,354	\$394,993	\$431,281	\$36,970,435
Total Misdemeanor Court Expenditures	\$540,968	\$420,456	\$446,432	\$37,596,320
Juvenile Charges Added (from OCA report)	745	608	575	15,024
Juvenile Cases Paid	709	553	379	22,404
Juvenile Attorney Fees	\$141,942	\$110,435	\$89,526	\$8,221,663
Total Juvenile Expenditures	\$142,837	\$114,830	\$89,531	\$8,392,554
Total Attorney Fees	\$2,380,366	\$1,927,900	\$1,887,616	\$166,177,254
Total ID Expenditures	\$2,950,054	\$2,574,543	\$2,627,264	\$277,829,412
Increase in Total Expenditures over 2001 Baseline	177%	124%	125%	213%
Total ID Expenditures per Population	\$8.70	\$7.01	\$7.04	\$9.52
Commission Formula Grant Disbursement	\$234,623	\$245,128	\$211,108	\$21,929,443
Cost Recouped from Defendants	\$215,879	\$162,959	\$155,981	\$9,536,138

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
- FY2021 Indigent Defense Expenditure Report Manual found at:  
<http://www.tidc.texas.gov/media/8d98cc6722c9897/fy2021-ider-manual-final.pdf>

## APPENDIX C – DISTRIBUTION LIST

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The Honorable Kerry Neves  
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10th District Court  
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