



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Ochiltree County, Texas

FY 2014 Indigent Defense Expenses

Final Report

January 22, 2016

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

Ochiltree County's fiscal monitoring desk review began on April 27, 2015. 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, 2013 to September 30, 2014 (FY2014) was reviewed as part of the fiscal monitoring desk review process.

Summary of Findings

- Attorney Fee Vouchers were not utilized as outlined in the counties indigent defense plan nor as required to be in compliance with Code of Criminal Procedures (CCP) Article 26.05(c).

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 FY2014. Records provided by the Ochiltree County Auditor's Office were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor met with the assistant county auditor, the county judge, and the district judge administrator. The fiscal monitor reviewed:

- random samples of paid attorney fees;
- general ledger transactions provided by the Ochiltree County Auditor'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

Ochiltree County is located in the Texas Panhandle. The County occupies an area of 918 square miles, and serves an estimated population of 10,861. The County is a political subdivision of the State of Texas. Neighboring counties are Lipscomb, Roberts, Hansford and Hemphill Counties in the State of Texas and Texas and Beaver Counties in the State of Oklahoma.

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 2014 indigent defense on-line grant application to assist in the provision of indigent defense services. Ochiltree County met the formula grant eligibility requirements and was awarded \$17,341 for FY 2014.

Discretionary Grant

Ochiltree County did not apply for a discretionary grant for FY 2014; therefore no discretionary grant funds were reviewed.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

CCP Article 26.04(a) requires the courts to adopt and publish written countywide procedures for providing indigent defense services, commonly known as an indigent defense plan. As part of these procedures, the judges must adopt an attorney fee voucher form consistent with CCP Article 26.05(c). Government Code Section 79.036 requires that these countywide procedures be provided to the Commission biennially. Ochiltree County adopted and properly submitted these indigent defense plans. Each plan included an approved attorney fee voucher to be used for the respective level of court, however, the monitoring review revealed that the approved attorney fee voucher was not in use by the County. Instead, an “Order Compensating Attorney” was submitted by each court.

CCP Article 26.05 (c) reads in part “Each fee schedule . . . and shall provide a form for the appointed counsel to itemized the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings...” and “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.

The “Order Compensating Attorney” provides almost all the necessary information for the county auditor to prepare the IDER as required by rule §174.10, Title 1, Texas Administrative Code. However, it does not provide the attorney the opportunity to submit an itemized voucher as required by Article 26.05 (c) of the Texas Code of Criminal Procedure or to request a specific payment amount, which the judge may approve or disapprove also required by Article 26.05(c). It also does not provide the level of case detail the auditor needs to properly complete the IDER.

Recommendation:

The judges should review the attorney fee voucher form submitted as part of the indigent defense plan. The attorney fee voucher approved in the indigent defense plan does not provide for approval by the presiding judge nor does it provide space for an explanation for any variance from the billed amount that the judge may approve or disapprove under Article 26.05 (c) of the Texas Code of Criminal Procedure. The judges should review and implement procedures to include the submission of the attorney fee vouchers by the attorneys, a review and approval process by the presiding judges, and the submission to the auditor’s office for payment.

County Response:

Ochiltree County Action Plan

The Courts have implemented the use of voucher forms approved by the TIDC. Attorneys now submit their claims for fees and expenses on these forms directly to the Courts. The Courts then approve or disapprove the claims with appropriate comments. The vouchers, by themselves are merely a form of invoice. They cannot serve as an order of payment. The Courts, as a final step in the compensation process, issue Orders of Compensation directing the Auditor to pay counsel.

Contact person(s): 84th District Judge William D. Smith

Completion date: 11/1/15_____

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

OCHILTREE COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2012	2013	2014
Population Estimate	10,442	10,757	10,861
Juvenile Assigned Counsel	\$2,200.00	\$1,420.00	\$1,800.00
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$46,740.00	\$31,290.00	\$98,110.00
Adult Misdemeanor Assigned Counsel	\$13,500.00	\$22,367.41	\$18,550.00
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	\$500.00	\$0.00	\$0.00
Expert Witness	\$0.00	\$0.00	\$0.00
Other Direct Litigation	\$0.00	\$0.00	\$284.48
Total Court Expenditures	\$62,940.00	\$55,077.41	\$118,744.48
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$7,121.00	\$2,794.00	\$2,794.00
Total Court and Administrative Expenditures	\$70,061.00	\$57,871.41	\$121,538.48
Formula Grant Disbursement	\$9,385.00	\$12,240.00	\$17,341.00
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$900.00	\$190.00	\$890.00
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	94	125	176

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Ochiltree County				
Year	2012	2013	2014	Texas 2014
Population (Non-Census years are estimates)	10,442	10,757	10,861	26,642,612
Felony Charges Added (from OCA report)	67	122	204	270,401
Felony Cases Paid	41	36	99	192,735
% Felony Charges Defended with Appointed Counsel	61.19%	29.51%	48.53%	71.28%
Felony Trial Court-Attorney Fees	\$46,740.00	\$31,290.00	\$98,110.00	\$104,577,627.50
Total Felony Court Expenditures	\$47,240.00	\$31,290.00	\$98,110.00	\$121,013,238.56
Misdemeanor Charges Added (from OCA report)	244	357	429	530,335
Misdemeanor Cases Paid	49	87	74	223,045
% Misdemeanor Charges Defended with Appointed Counsel	20.08%	24.37%	17.25%	42.06%
Misdemeanor Trial Court Attorney Fees	\$13,500.00	\$22,367.41	\$18,550.00	\$38,286,859.48
Total Misdemeanor Court Expenditures	\$13,500.00	\$22,367.41	\$18,550.00	\$39,406,492.35
Juvenile Charges Added (from OCA report)	6	8	10	31,996
Juvenile Cases Paid	4	2	3	45,340
Juvenile Attorney Fees	\$2,200.00	\$1,420.00	\$1,800.00	\$10,901,190.88
Total Juvenile Expenditures	\$2,200.00	\$1,420.00	\$2,084.48	\$11,597,789.07
Total Attorney Fees	\$62,440.00	\$55,077.41	\$118,460.00	\$159,310,349.08
Total ID Expenditures	\$70,061.00	\$57,871.41	\$121,538.48	\$229,943,368.55
Increase In Total Expenditures over Baseline	121.99%	83.37%	285.10%	159.20%
Total ID Expenditures per Population	\$6.71	\$5.38	\$11.19	\$8.63
Commission Formula Grant Disbursement	\$9,385.00	\$12,240.00	\$17,341.00	\$36,739,158.25

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
- FY2014 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>

APPENDIX C – DISTRIBUTION LIST

The Honorable Earl McKinley
Constitutional County Judge
511 S. Main
Perryton, TX 79070

The Honorable William D. Smith
Local Administrative District Judge
P.O. Drawer 3437
Stinnett, TX 78401

Mr. Jim Dear
County Auditor
511 S. Main Street
Perryton, TX 79070

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