



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Webb County, Texas**

**FY 2016 Indigent Defense Expenses**

**Final Report**

**March 27, 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 .....	7
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT.....	8
APPENDIX B – CRITERIA.....	10
APPENDIX C – DISTRIBUTION LIST .....	11

# EXECUTIVE SUMMARY

Webb County's on-site fiscal monitoring visit was conducted September 18-20, 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 and prosecution 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).
- Written explanation from judges for variance 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 Procedures.

## OBJECTIVE

The objectives of this review were to:

- determine the accuracy of the Indigent Defense Expenditure Report (IDER);
- 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 Webb 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, an Assistant County Auditor, the County Judge, the Indigent Defense Coordinator and the Public Defender. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- general ledger transactions provided by the Webb 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

Webb County was founded in 1848 and was split in 1856 to establish Encinal County. However, Encinal County was never organized so it was dissolved and the territory was returned to Webb County. Webb County is the largest county in south Texas and the sixth largest in the state. The county is named for James Webb, who served as a Secretary of the Treasury, Secretary of State and Attorney General of the Republic of Texas and then a judge of the US District Court. The county seat is Laredo. Webb County serves an estimated population of 275,291 and occupies an area of 3,375 square miles, of which 14 square miles is water. Webb County is bordered to the west by Mexico. The neighboring Texas counties are Dimmit, Duval, Jim Hogg, LaSalle, Maverick, McMullen and Zapata.

### 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 request funds to assist in the provision of indigent defense services. Webb County met the formula grant eligibility requirements and was awarded \$304,990 for FY 2016.

### Discretionary Grant

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

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

Webb County erroneously included general court expenditures and prosecution 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). Twelve vouchers from the expert witness, investigation and other direct litigation expense categories were reviewed. Of these, seven were for mental health evaluations. Five of the seven vouchers indicated that the evaluation was performed for the court 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.

Additionally, one voucher was for the expert witness testimony of the Bexar County Medical Examiner to testify for the prosecution. This expense would only have been appropriate to include on the IDER if the expert had been called by the defense.

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 Webb 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 must be developed to correctly 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. 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:**

*Finding One - Indigent Defense Information (Non-Criminal Indigent Defense Expenses)*

#### **Webb County Corrective Action Plan**

*The Auditor's office has created a general ledger subaccount to correctly identify and record eligible expenses for mental health expert expenses requested by the defense counsel where the results are shared exclusively with the defense team.*

*The court coordinators have been advised of this subaccount so the courts can properly begin coding these types of expenditures with proper support.*

*Contact person(s): Claudia Lopez/ Rafael Perez  
Completion date: 12/31/2017*

## **Finding Two**

The Code of Criminal Procedure (CCP) Article 26.05(c) reads in part... 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.”

Seventy-eight attorney fee vouchers were reviewed. Nine vouchers appear to have variances in the amount requested by attorney and the amount approved by judge. Of these nine vouchers, only one had an explanation provided for the approved variance. It is unclear why the judges are not providing an explanation when they approve an amount that varies from the amount requested by the attorney, but without the explanation the county is not in compliance with CCP article 26.05(c).

## **Recommendation:**

The judges must provide written explanation for any variance between the amount requested by the attorney and the amount approved for payment.

## **County Response:**

*Finding Two - Compensation of Counsel Appointed to Defend*

### **Webb County Corrective Action Plan**

*The respective Judicial District and County Court at Law coordinators will be responsible to ensure that any variation between the billing of defense attorney's time and the presiding Judge(s) approved amount is explained appropriately. This will be documented in the designated area found in the Request for Payment form utilized by the county.*

*In addition, the Business Office and the Accounts Payable Auditor's office will review the Request for Payment to make sure there is a written explanation, when applicable.*

*Contact person(s): Claudia Lopez/ Cynthia Gutierrez/ Rafael Perez/ Rebecca Garcia  
Completion date: 12/31/2017*

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>WEBB COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Population Estimate	268,653	271,649	275,291
Juvenile Assigned Counsel	\$37,473	\$33,150	\$40,150
Capital Murder	\$32,250	\$150,161	\$329,916
Adult Non-Capital Felony Assigned Counsel	\$293,197	\$350,343	\$253,319
Adult Misdemeanor Assigned Counsel	\$149,337	\$261,226	\$353,688
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$6,750	\$6,910	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$4,000	\$4,625	\$5,223
Expert Witness	\$51,202	\$21,325	\$38,600
Other Direct Litigation	\$44,926	\$95,060	\$78,784
Total Court Expenditures	\$619,135	\$922,800	\$1,099,691
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$0.00	\$0.00	\$0.00
Total Public Defender Expenditures	\$2,491,254	\$2,779,415	\$2,764,912
Total Court and Administrative Expenditures	\$3,110,389	\$3,702,215	\$3,864,603
Formula Grant Disbursement	\$471,588	\$280,527	\$304,990
Discretionary Disbursement			
Reimbursement of Attorney Fees	\$100,992	\$90,396	\$95,680
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	1003	1236	1288

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records



<b>Webb County</b>				
<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Texas 2016</b>
Population (Non-Census years are estimates)	268,653	271,649	275,291	27,725,192
Felony Charges Added (from OCA report)	1,958	1,981	1,901	276,879
Felony Cases Paid	1,547	2,296	1,985	200,580
% Felony Charges Defended with Appointed Counsel	79%	116%	104%	72%
Felony Trial Court-Attorney Fees	\$325,447	\$500,504	\$583,235	\$115,192,600
Total Felony Court Expenditures	\$402,952	\$580,717	\$681,574	\$131,727,198
Misdemeanor Charges Added (from OCA report)	3,725	3,236	2,945	481,253
Misdemeanor Cases Paid	2,676	2,892	3,356	214,674
% Misdemeanor Charges Defended with Appointed Counsel	72%	89%	114%	45%
Misdemeanor Trial Court Attorney Fees	\$149,337	\$261,226	\$353,688	\$40,245,051
Total Misdemeanor Court Expenditures	\$161,548	\$277,076	\$363,188	\$41,003,480
Juvenile Charges Added (from OCA report)	710	710	765	27,307
Juvenile Cases Paid	652	550	642	41,989
Juvenile Attorney Fees	\$37,473	\$33,150	\$40,150	\$11,119,664
Total Juvenile Expenditures	\$47,885	\$41,350	\$51,400	\$11,424,425
Total Attorney Fees	\$519,007	\$801,790	\$977,073	\$172,232,454
Total ID Expenditures	\$3,110,389	\$3,702,215	\$3,864,602	\$247,730,647
Increase in Total Expenditures over Baseline	154%	202%	215%	179%
Total ID Expenditures per Population	\$11.58	\$13.63	\$14.04	\$8.94
Commission Formula Grant Disbursement	\$471,588	\$280,527	\$304,990	\$25,056,873
Cost Recouped from Defendants	\$100,992	\$90,396	\$95,680	\$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 Cayetano Tijerina  
Constitutional County Judge  
Webb County  
1000 Houston St., 3<sup>rd</sup> floor  
Laredo, TX 78040

Honorable Rebecca Palomo  
Local Administrative District Judge  
1110 Victoria, 3<sup>rd</sup> Floor  
Laredo, TX 78040

Honorable Hugo D. Martinez  
Local Administrative Statutory County Court Judge  
1110 Washington, Suite 102  
Laredo, TX 78040

Mr. Leo Flores  
County Auditor  
1110 Washington, Suite 201  
Laredo, TX 78040

Mr. Cornell Mickley  
Indigent Defense Coordinator  
Webb County Pre-Trial Services  
P.O. Box 13, Suite 501  
Laredo, TX 78040

Mr. Geoffrey Burkhart  
Executive Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Wesley Shackelford  
Deputy Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Edwin Colfax  
Grants Program Manager, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701