



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Orange County, Texas

FY2023 Indigent Defense Expenses

Final Report

January 2026

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) is responsible for fiscal monitoring per Texas Administrative Code, Subchapter D, Section 173.401, which states: “The Commission or its designees will monitor the activities of grantees as necessary to ensure that Commission grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements.”

TIDC conducted an on-site fiscal monitoring review of Orange County from October 22-25, 2024. 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, 2022, through September 30, 2023 (FY2023).

Summary of Findings

- No findings are assessed for this fiscal review. However, the fiscal monitor noted an attorney fee voucher of \$300 that was overlooked and not reported on the IDER.

TIDC thanks Orange County officials and staff for their assistance in completing this review. TIDC stands ready to provide any assistance that may be helpful.

DETAILED REPORT

Background

TIDC selected Orange County for a review through its annual county selection process, which considers county size, spending, date of last fiscal review (if any), and other reported indigent defense data. The selection process seeks to cycle through counties around the state.

This fiscal review covered the reports filed for FY 2023.

County Background

Orange County was formed from Jefferson County in 1852. The current population is estimated at 84,869 and the county seat is the city of Orange. Orange County occupies an area of 379.5 square miles, including 46 square miles of water. The County is located at the furthest southeast position of the state and is bordered by the Neches River on the west and the Sabine River on the Louisiana border on the east. The County is 113 miles from Houston.

Orange County is served by three district courts—the 128th, 63rd, and 260th—and two county courts-at-law.

Orange County reported \$341,117.83 in criminal indigent defense expenditures for FY2023. TIDC noted that Orange County reported no expenditures in the Investigation, Expert Witness or Other Litigation expenses categories.

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 public 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, 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 FY2023 indigent defense online grant application to assist in the provision of indigent defense services. Orange County met the formula grant eligibility requirements and was awarded a \$51,508 Formula Grant for FY2023.

Objective

The objectives of this review were to:

- Determine the accuracy of the Indigent Defense Expenditure Report (IDER) and any other grant report that may have been filed for the time period of review;
- 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 criminal and juvenile delinquency indigent defense expenditures to ensure compliance with applicable laws, regulations, and the provisions of the grants for FY2023. The records reviewed were provided by the Orange 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 met with the County Auditor and her staff, The fiscal monitor reviewed:

- General ledger transactions provided by the County Auditor's Office;
- Random samples of paid attorney fee vouchers;
- IDER;
- Attorney fee schedule;
- Any applicable contracts; and,
- The County's local indigent defense plans filed with TIDC.

Review Assessment

Statutory Data Reporting

Under Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners' court) must annually prepare and send indigent defense data to the TIDC. This data must include the total expenses for cases in which an attorney was appointed for an indigent defendant or indigent juvenile in each district court, county court, statutory county court, and appellate court. Financial data reports must include attorney-level information¹ and shall be prepared in the form and manner prescribed by the Commission.²

To determine the accuracy of the IDER, TIDC requested general ledger transactions that were used by Orange County to prepare the IDER.

¹ TEX. GOV'T CODE § 79.036(a-1).

² TEX. GOV'T CODE § 79.036(e)

Orange County provided a PDF version of each general ledger account used to prepare the FY2023 IDER. The County maintains a separate ledger account for each court. TIDC was given six ledgers to support the amounts reported on the FY2023 IDER, including a ledger for each of the three district courts and the two county courts-at-law. The sixth ledger provided was for reimbursements received by the County and reported on the IDER. TIDC was able to verify the total amount recorded on each ledger as the amount reported for each court except for the County Court-at-Law 2 (CCL2). For this court, Orange County reported \$300 less than the amount recorded on that ledger.

TIDC notes that as you review the CCL2 ledger, the final entry is the only entry on the final page of that ledger and appears to be a part of the header when you glance at the page. TIDC has assessed that the \$300 under-reporting was not a systemic issue. Therefore, no finding is made for this oversight.

TIDC has noted that no indigent defense expenditures other than attorney fees were recorded on the FY2023 IDER. TIDC reviewed the general ledger for all of Orange County's accounts looking for other eligible expenses that might not have been reported on the IDER and found none. Judge Courtney Arkeen stated that she does approve investigator costs and had recently paid some. Those approved defense investigation payments occurred in the next fiscal year and not the year under review.

Standard Attorney Fee Schedule and Payment Process

Article 26.05(b) of the Texas code of Criminal Procedures (CCP) reads in part, "All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioner's court of the county." Article 26.05(c) of the CCP reads in part:

Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize 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 or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. 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.

To validate compliance with the above statutes and other policies and procedures relating to indigent defense payments, TIDC selected a random sample of 32 attorney fee vouchers to perform attribute testing.

The ten attributes tested were:

- 1) Is the voucher for an allowable expense?
- 2) Was the voucher submitted by the attorney?
- 3) Is the payment related to a criminal matter?

- 4) Is more than one case presented on the voucher, if yes, we look at the way the county identifies the count on the IDER for each case.
- 5) Does the voucher itemize the service performed?
- 6) Is the court identified on voucher?
- 7) Are the fees paid consistent with the published fee schedule?
- 8) Is the voucher being paid within 60 days of submission?
- 9) Is the voucher approved by the judge?
- 10) If the judge does not agree with the amount requested, is there a written explanation provided for the changed amount?

TIDC reviewed 32 attorney fee vouchers and noted that one—voucher #242024 for attorney invoice #B220473-R—included both a flat fee of \$450 and an additional two hours billed at \$150. TIDC discussed this with County Auditor Pennee Schmitt, noting that paying both an hourly rate and a flat fee for the same case is somewhat unusual. Orange County’s attorney fee voucher form lists the rates for various services, and the attorney had checked multiple boxes indicating additional work, prompting TIDC to verify whether multiple fees were appropriate. The Auditor confirmed that the judge approved the extra time because the attorney met with an interpreter. She also noted that in Orange County it is not unusual for a case to include both a flat fee and hourly charges.

TIDC would like to note that the cost of an interpreter assisting an attorney while preparing a case for an indigent defendant is an allowable expense on the IDER, while interpreter expenses for court proceedings are considered general court expenditures and are not allowable on the IDER. For the invoice in question the hourly rate paid to the attorney was for the attorney time to meet with the interpreter. The expense for the interpreter was covered by the court’s budget.

Establish Minimum Attorney Qualifications

Under Article 26.04(d) of the Code of Criminal Procedure, private attorneys wishing to take court appointments must apply to be on an appointment list. The list must contain objective qualifications, including a minimum annual continuing legal education (CLE) requirement of at least six hours per year in criminal or juvenile law. Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters.

Because this fiscal review was conducted in concurrence with a TIDC policy review, the attorney selection and CLE requirements were not included in this fiscal review.

Findings and Recommendations

Statutory Data Reporting

Finding

No findings are assessed for this fiscal review.

Other Observations

An attorney fee voucher of \$300 was overlooked and not reported on the IDER.

Recommendation

Orange County should develop a process that would verify all eligible expenditures are included on the IDER.

Standard Attorney Fee Schedule and Payment Process

Finding

No Findings noted

Conclusion

TIDC appreciates the professionalism and assistance of Orange County officials and staff. There are no findings assessed for this review. No further action is necessary.

APPENDICES

Appendix A – Indigent Defense Expenditure Report

ORANGE COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2021	2022	2023
Population Estimate	82,168	84,111	84,869
Juvenile Assigned Counsel	\$17,063	\$21,390	\$20,190
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$231,394	\$311,033	\$246,423
Adult Misdemeanor Assigned Counsel	\$100,107	\$71,230	\$74,505
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$10,585	\$25,075	\$0
Other Direct Litigation	\$8,283	\$40,886	\$0
Total Court Expenditures	\$367,434	\$469,613	\$341,118
Administrative Expenditures	\$28,450	\$27,441	\$24,940
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
Total Public Defender Expenditures	NA	NA	NA
Total Court and Administrative Expenditures	\$395,883	\$497,054	\$366,058
Formula Grant Disbursement	\$53,054	\$51,061	\$51,508
Reimbursement of Attorney Fees	\$49,976	\$43,579	\$22,786
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	NA	NA	NA
Total Assigned Counsel Cases	949	890	883

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Orange County				
Year	2021	2022	2023	Texas 2023
Population (non-census years are estimates)	82,168	84,111	84,869	30,301,595
Felony Charges Disposed (from OCA report)	741	776	742	293,507
Felony Cases Paid	488	547	507	253,828
% Felony Charges Defended with Appointed Counsel	66%	70%	68%	87%
Felony Trial Court-Attorney Fees	\$231,394	\$311,033	\$246,423	\$187,452,018
Total Felony Court Expenditures	\$249,317	\$359,564	\$246,423	\$207,426,768
Misdemeanor Charges Disposed (from OCA report)	745	726	671	379,777
Misdemeanor Cases Paid	400	267	298	204,021
% Misdemeanor Charges Defended with Appointed Counsel	54%	37%	44%	54%
Misdemeanor Trial Court Attorney Fees	\$100,107	\$71,230	\$74,505	\$59,889,428
Total Misdemeanor Court Expenditures	\$100,107	\$88,659	\$74,505	\$60,714,888
Juvenile Charges Disposed (from OCA report)	32	31	14	18,524
Juvenile Cases Paid	61	76	78	30,261
Juvenile Attorney Fees	\$17,064	\$21,390	\$20,190	\$11,722,779
Total Juvenile Expenditures	\$18,009	\$21,390	\$20,190	\$11,985,479
Total Attorney Fees	\$348,565	\$403,653	\$341,118	\$264,081,061
Total ID Expenditures	\$395,883	\$497,054	\$366,058	\$412,351,431
Increase in Total Expenditures over 2001 Baseline	53%	93%	42%	364%
Total ID Expenditures per Population	\$4.82	\$5.91	\$4.31	\$13.59
Commission Formula Grant Disbursement	\$53,054	\$51,061	\$51,508	\$20,496,469
Cost Recouped from Defendants	\$49,976	\$43,579	\$22,786	\$8,746,457

Source: Texas Indigent Defense Commission records

Appendix B – Criteria

Criteria

- Texas Grant Management Standards
- Texas Government Code, Section 79.036, Indigent Defense Information
- Texas Government Code, Section 79.037, Technical Support; Grants
- Code of Criminal Procedure, Art 26.04, Procedures for Appointing Counsel
- Code of Criminal Procedure, 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
- FY2023 Indigent Defense Expenditure Report Manual found at:
<https://www.tidc.texas.gov/media/ruffnsxs/fy2023-ider-manual-final.pdf>

Appendix C – Distribution List

The Honorable John H. Gothia
Orange County Judge
123 S 6th Street
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jgothia@co.orange.tx.us

The Honorable Courtney Arkeen
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801 W. Division Street
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The Honorable Troy Johnson
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