TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Hill County, Texas

FY2023 Indigent Defense Expenses

Final Report

August 2026

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (Commission or TIDC) is responsible for fiscal monitoring of Texas counties' indigent defense expenditures per Texas Administrative Code Subchapter D Sec. 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 Hill County from May 20 through May 21, 2024. Email exchanges continued until June 4, 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

- The FY2023 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code §79.036(e) was not supported by the financial data provided.

- Two attorney fee vouchers were paid amounts less than requested by the attorney, with no explanation for the variance provided as required by Article 26.05(c) of the Texas Code of Criminal Procedure (CCP).

These findings and associated recommendations are detailed in the following report.

TIDC thanks Hill County officials and staff for their assistance in completing this review. TIDC stands ready to provide assistance to remedy these issues.

DETAILED REPORT

Background

TIDC selected Hill County for a review through its annual county selection process, which takes into account 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 FY2023.

County Background

Hill County was created in 1853 from part of Navarro County. The county is located in north central Texas at the intersection of Interstate Highway 35's East and West branches. The current population is estimated at 36,722, and the county seat is Hillsboro. Hill County occupies an area of 986 square miles, of which 27 square miles is water.

Hill County is served by the 66th District Court, a county court-at-law, and the Constitutional County Court.

Hill County uses private assigned counsel to handle indigent defense cases. Total expenditures for criminal defense representation reported by Hill County for FY2023 were $438,535.

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, 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. Hill County met the formula grant eligibility requirements and was awarded a $34,488 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 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.
- 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 FY2023. Family protection representation expenditures related to cases affecting the parent/child relationship, i.e., "CPS cases," were not part of this review.

The records reviewed were provided by the Hill 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 two staff members, a county court-at-law administrator, the Indigent Defense coordinator, and the District Court Judge. The fiscal monitor reviewed:

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

<u>Review Assessment</u>

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 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 information[1] 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 Hill County used to prepare the IDER. The general ledger for felony appointed attorneys had a net total of $274,840.65. A provided spreadsheet listed felony case amounts between $269,866.15 for trial-level

[1] TEX. GOV'T CODE § 79.036(a-1).

[2] TEX. GOV'T CODE § 79.036(e)

cases and $4,974.50 for appeal-level cases. However, the IDER reported $269,766.15 for trial-level cases and $4,949.00 for appeals at the felony level, a difference of $100 for the trial level and $25.50 for the appeal level. The spreadsheet maintained by the auditor is manually entered and could have amounts that differ from the general ledger.

When asked about the difference, Hill County Auditor's Office staff could not identify the discrepancy. TIDC noted that two staff members in the auditor's office who assisted with TIDC's review were new employees at the time the report was due. The County Auditor was also new to the position at the time.

Additionally, there were three invoices from Dumas Law Firm that were journalized into the indigent defense attorney ledger. All three invoices were billed to Mark Pratt, who is the District Attorney for Hill County. The invoices all list appellate work. It appears that Dumas Law Firm was acting on behalf of the DA for appeals; therefore, these invoices should not have been included on the appointed Defense Attorney's general ledger. The invoices were paid from the DA's forfeiture account, but the expense was transferred and recorded as an expense on the IDER.

An invoice included in the IDER for an expert was marked as a competency hearing testimony fee for $100. 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. Supporting documentation must show that the expense is for a mental health expert retained by the defense, operating under derivative attorney-client privilege, to assist in the criminal defense of an indigent defendant, and must be reported in the IDER. An order granting an *ex parte* defense motion for funds for a mental health defense expert is generally sufficient to establish the expense as an eligible 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 the evaluation. There were two invoices listed in the ledger labeled for "sanity" that were not included on the IDER. If these invoices were also evaluations of competency to stand trial or for prosecution witnesses, it was appropriate that they were not reported on the IDER.

A second invoice included in the IDER as an expert expense reflected the cost of a hotel room, but a note indicated the room was booked for a victim. This is not an allowable defense expense unless the victim appeared for the defense. However, no supporting documentation was available; therefore, the expense is in question.

The Statement of Facts ledger contained two invoices that appeared to be transcripts of two of the appeals in which defense attorneys were appointed. Costs incurred to prepare a transcript for an indigent defendant, for use in preparing an appeal, are eligible and should be reported in the IDER under 'Other Expenses' at the appeal level. However, these two expenses were not reported. Therefore, Hill County was not in compliance with Section 79.036(e) of the Texas Government Code.

Promulgate Standard Attorney Fee Schedule and Payment Process

Article 26.05(b) of the Texas Code of Criminal Procedures reads:

> 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 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 commissioners court of the county.

Article 26.05(c) of the Texas Code of Criminal Procedures 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 the above statutes and a few other policies and procedures relating to indigent defense payments, a random sample of 30 attorney fee vouchers was selected 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, does the county have a method for accurately tracking case counts to ensure all cases are reported?
5) Does the voucher itemize the service performed?
6) Is the court identified on the voucher?
7) Are the fees paid consistent with the published fee schedule?
8) Is the voucher 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 a written explanation provided for the changed amount?

During attribute testing of vouchers, several vouchers reflected an amount requested by the attorney and approved by the judge but paid in a different amount. When asked about these discrepancies, the auditor's office stated that auditor staff were the ones changing the amount due to County policy. For example, only four court days are allowed; however, one attorney billed for five. As a result, $100 for one of the court days was removed. Another voucher listed three court dates, but two were removed as duplicates already paid on other invoices; accordingly, the auditor's staff adjusted the amount paid. Since the court has authorized the auditor to adjust payments to conform with county policy, these discrepancies may be appropriate. However, the reason for the adjustments should be documented, and the judge should be informed of any adjustments made by auditor staff.

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[3]. Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters[4].

The indigent defense coordinator was new to the position at the time of TIDC's site visit. She provided the list of attorneys but had to seek assistance from a retired employee who previously monitored CLE hours to track down the relevant records. CLE hours for the attorneys were subsequently provided to TIDC via email after the on-site visit.

Assessment

TIDC reviewed appointment lists and CLE records and found that the County has procedures for managing appointment lists and ensuring that all attorneys on the lists meet their annual CLE requirement.

Findings and Recommendations

Statutory Data Reporting

Finding

Under §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 is paid. Hill County prepared and submitted the FY2023 Indigent Defense Expenditure Report (IDER). However, the financial data provided did not fully support the FY2023 IDER submitted.

Recommendation

Because the County Auditor's office underwent changes in staff, TIDC recommends that the new staff review the IDER manual and video training available on TIDC's website and continue to ask questions and learn about the expenses that are allowed and required to be reported on the IDER.

TIDC recommends that the County adopt procedures to separate allowable defense expenses from other types of court expenses in the general ledger so they can be easily obtained for the IDER. For example, the County could use separate ledger categories for court reporter transcript costs related to an indigent defendant's appeal and for court reporter expenses for time spent in the courtroom.

County Response:

The statement provided on the Executive Summary says "The FY2023 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code 79.036(e) was not supported by the financial

[3] TEX. ADMIN. CODE §§ 174.1–4. Attorneys may be Board Certified in criminal or juvenile law in lieu of the annual CLE requirement.

[4] TEX. CODE CRIM. PROC. ART. 26.04(d).

d*ata provided." The wording was changed on page 8 to say that the financial data provided did not "fully support" the FY2023 IDER submitted.*

Although our report was not 100% accurate, any errors were not intentional and should be considered minor, or insignificant. Discrepancies of $100 and $25.50 were noted in the report. There were 3 attorney vouchers that were included in error as well as some statement of facts that were omitted when they should have been reported. Overall, the differences were minimal. As described in the report, a new Auditor (Mr. Rao) was appointed in November 2022 and there was a complete turnover of staff following the appointment. The new auditor staff followed existing procedures of tracking the indigent expenses by spreadsheet. Sadly, the new staff assigned the task of completing the IDER report were not adequately trained.

It was suggested that appeal cases should be separated from trial-level expenses in the general ledger, however, we do not feel that is necessary. The number of appeal cases does not usually exceed 4 to 6 annually and separating those is not an issue for us. Another suggestion was to separate ledger categories for court reporter transcript costs from court reporter expenses for time spent in the courtroom. Those costs are not currently co-mingled and have always been separated.

Corrective Action Plan

The Assistant Auditor and the County Auditor, who prepare the IDER, will complete training every year to ensure accurate reporting. Newly appointed County Auditor Amy Peavy will ensure this training is completed. Chanda Burns, Assistant Auditor, prepares and tracks expenses and will complete annual training. Training was completed by Burns in Sept 2024 and October 2025 following the field visit.

Contact person(s): *Amy Peavy, County Auditor*
Completion date: *September 2024*

Promulgate Standard Attorney Fee Schedule and Payment Process

Finding

TIDC examined 35 attorney fee vouchers to determine whether indigent defense payments met the requirements of Criminal Code of Procedure (CCP) Article 26.05(b) and Article 26.005(c). Two of the 35 attorney fee vouchers reviewed for FY2023 appeared to be approved by the judge as requested by the attorney; however, the amount paid was not the amount requested, and no written explanation was provided. Therefore, Hill County was not in compliance with CCP 26.05(c).

Recommendation

Judges must provide a written explanation for any variance in the amount approved and the amount requested by the attorney to comply with CCP 26.05(c).

County Response:

Two attorney vouchers were paid amounts less than requested by the attorney, with no explanation for the variance provided as required by Article 26.05(c) of the Texas Code of Criminal Procedures (CCP). Two out of the 35 vouchers examined which had been approved by the judge were reduced and no written explanation was provided.

Hill County's Indigent Plan (May 2022) states that an attorney may not receive more than four (4) DAILY RATE fees under Section C. Daily Rate for each day in each court, regardless of the number of cases in which he appears as appointed counsel on the same day in each particular court. However, effective June 1, 2022, the limit was changed to no more than 4 daily rates (per court). In the early 2000's, during my first appointment, my district judge asked the auditor's office to enforce this rule as certain attorneys had taken advantage of the County at times. The practice of having the auditor's office reduce the vouchers was approved by the district judge. On every invoice that was reduced, there was a notation regarding the limit of 4 daily rates per day in court and documentation was furnished to accounts payable.

Corrective Action Plan:

Our understanding of the problem, as communicated by the TIDC auditor, was that the judge needed to sign off on the changes. On page 7 of the Fiscal Monitoring Report, it states that "Since the court has authorized the auditor to adjust payments to confirm with county policy, these discrepancies may be appropriate. However, the reason for the adjustments should be documented, and the judge should be informed of any adjustments made by the auditor staff." Since June 2004, judge's signatures are now required on any adjustments.

Contact person(s): *Amy Peavy, County Auditor*
Completion date: *June 2024*

Conclusion

TIDC appreciated the professionalism and assistance of Denton County officials and staff.
TIDC staff stand ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

APPENDICES

Appendix A – Indigent Defense Expenditure Report

Hill County Indigent Defense Expenditures			
Expenditures	**2020**	**2021**	**2022**
Population Estimate	37,470	37,470	36,722
Juvenile Assigned Counsel	$10,973.	$8,668	$12,951
Capital Murder	$0	$0	$0
Adult Non-Capital Felony Assigned Counsel	$163,269	$177,812	$176,536
Adult Misdemeanor Assigned Counsel	$114,614	$76,796	$96,215
Juvenile Appeals	$0	$0	$0
Adult Felony Appeals	$11,704	$0	$2,250
Adult Misdemeanor Appeals	$602	$0	$0
Licensed Investigation	$11,809	$2,109	$9,731
Expert Witness	$143	$0	$0
Other Direct Litigation	$10,913	$1,244	$26,980
Total Court Expenditures	$323,396	$266,710	$324,663
Administrative Expenditures	$0	$0	$0
Funds Paid by Participating County to Regional Program	$14,704	$14,704	$14,704
Total Public Defender Expenditures	N/A	N/A	N/A
Total Court and Administrative Expenditures	$338,100	$281,414	$339,367
Formula Grant Disbursement	$41,626	$38,991	$35,192
Reimbursement of Attorney Fees	$10,345	$7,691	$6,145
Reimbursement by State Comptroller for Writs of Habeas Corpus	$0	$0	$0
Total Public Defender Cases	N/A	N/A	N/A
Total Assigned Counsel Cases	718	639	657

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Hill County				
Year	**2020**	**2021**	**2022**	**Texas 2022**
Population (non-census years are estimates)	37,470	37,470	36,722	29,741,214
Felony Charges Disposed (from OCA report)	525	530	593	281,347
Felony Cases Paid	341	392	335	223,839
% Felony Charges Defended with Appointed Counsel	65%	74%	56%	80%
Felony Trial Court-Attorney Fees	$163,269	$177,812	$176,536	$157,670,919
Total Felony Court Expenditures	$181,342	$180,210	$206,470	$174,347,222
Misdemeanor Charges Disposed (from OCA report)	753	602	637	375,151
Misdemeanor Cases Paid	343	229	294	180,468
% Misdemeanor Charges Defended with Appointed Counsel	46%	38%	46%	48%
Misdemeanor Trial Court Attorney Fees	$114,614	$76,796	$96,215	$46,781,394
Total Misdemeanor Court Expenditures	$117,391	$76,804	$101,744	$47,403,096
Juvenile Charges Disposed (from OCA report)	21	10	18	16,039
Juvenile Cases Paid	25	18	26	25,808
Juvenile Attorney Fees	$10,973	$8,668	$12,951	$8,615,991
Total Juvenile Expenditures	$12,973	$8,788	$14,199	$8,777,828
Total Attorney Fees	$300,532	$263,276	$287,952	$216,689,397
Total ID Expenditures	$338,100	$281,414	$339,367	$343,434,379
Increase in Total Expenditures over 2001 Baseline	103%	69%	104%	287%
Total ID Expenditures per Population	$9.02	$7.51	$9.24	$11.53
Commission Formula Grant Disbursement	$41,626	$38,991	$35,192	$20,500,000
Cost Recouped from Defendants	$10,345	$7,691	$6,145	$8,675,431

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 Shane Brassell
Hill County Judge
P.O. Box 457
Hillsboro, TX 76645
countyjudge@co.hill.tx.us

The Honorable Justin W. Lewis
Local Administrative District Judge
66th District Court
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grivera@co.hill.tx.us

The Honorable Matt Crain
Local Administrative Statutory County Court Judge
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