



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Fisher County, Texas**

**FY2021 Indigent Defense Expenses**

**Final Report**

**April 26, 2023**

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# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Fisher County on May 23-24, 2022. Email exchanges continued until August 16, 2022. 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 §79.036(e) was not supported by financial data provided.
- Two attorney payments did not appear to be made in accordance with the published fee schedule as required by Article 26.05(b) of Texas Code of Criminal Procedure (CCP), and the published fee schedule does not appear to reflect the current payment practices.

## 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 Fisher 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

- Random samples of paid attorney fee vouchers;
- General ledger transactions provided by the Fisher 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

Fisher County was created in 1876 and organized in 1886. The County is named after Samuel Rhoads Fisher, a signer of the Texas Declaration of Independence and a Secretary of the Navy of the Republic of Texas.

Fisher County is located in the rolling plains of central West Texas. The current population is estimated at 3,897, and the county seat is Roby. Fisher County occupies an area of 902 square miles, of which 2.8 square miles is water. The County is bordered by Jones, Kent, Mitchell, Nolan, Scurry, Stonewall, and Taylor counties.

Fisher County is served by one district court and the constitutional county 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. Fisher County met the formula grant eligibility requirements and was awarded \$5,600 in formula grant award.

# DETAILED FINDINGS AND RECOMMENDATIONS

## **Finding One**

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 are paid. Fisher County prepared and submitted the FY2021 IDER in accordance with Texas Government Code §79.036(e); however, the reported amounts were not supported by the financial data provided.

The general ledger data for attorney fee expenses includes both criminal and civil cases. However, there are no distinguishing factors when reviewing the ledger to determine which payments represent civil case payments and which represent criminal case payments. The Fisher County Auditor provided 32 vouchers for review. Fisher County reported 32 cases paid for FY2021, and it was noted that each attorney fee voucher was for one case. However, one of the 32 vouchers submitted for review was an investigator voucher, leaving 31 attorney fee vouchers. The 31 attorney fee vouchers reviewed totaled \$18,775, while the IDER reported \$19,875 in attorney fees. Missing from the voucher review was one attorney fee voucher in the amount of \$650, but the amount was observed as paid per the general ledger. However, this leaves \$450 as possibly overreported on the IDER.

Further analysis of the data indicates that one voucher for an unindicted case in the amount of \$200 was not reported on the IDER. Also, \$650 was reported for an attorney in the 32<sup>nd</sup> District Court; however, there was no support for this \$650 payment or the case count of two in the 32<sup>nd</sup> District Court for the attorney.

Additionally, there were two vouchers paid to the attorney referred to above in the County Court. These two vouchers were for the same defendant but were separate cases. The attorney detail section of the County Court expenditure report indicated that this attorney was paid for one case and not the two represented by the paid vouchers.

## **Recommendations:**

To facilitate accurate reporting of the IDER, Fisher County should consider recording civil case information separately from the criminal cases on the general ledger so that expenditures in each category are clearly distinguished.

## **County Response**

### **Fisher County Action Plan**

*To help us keep more accurate records for the TDIC we have added several new line items in our general ledger. We have separated all the categories that have to be reported. Below is how we now have them listed. I believe this will help us keep more accurate records for the future.*

1. 10-540-515 Court Appointed Counsel County Court
2. 10 540-518 Court Appointed Counsel District Court
3. 10-540-519 Court Appointed Counsel CPS
4. 10-540-521 Court Appointed Investigator
5. 10-540-523 County Court Standing Counsel (not reported to TDIC)
6. 10-540-527 Court Appointed Counsel Juvenile

**Contact person(s):** *Becky Mauldin, Fisher County Auditor*

**Completion date:** *March 15, 2023*

### **Finding Two**

TIDC examined 31 attorney fee vouchers to determine whether indigent defense payments met the requirements of Code of Criminal Procedure (CCP) Article 26.05(b) and the local fee schedule. Two attorney payments did not appear to be made in accordance with the published fee schedule, and the published fee schedule does not appear to reflect the current payment practices.

The attorney fee schedule for felony and non-felony cases states:

1. Attorney's fees shall be compensated at the rate of not less than seventy-five dollars (\$75.00) per hour; and
2. Professional Staff fees shall be compensated at the rate of twenty-five dollars (\$25.00) per hour.

One voucher recorded 4.76 hours and another recorded 5 hours, but both were paid \$300, which is below the minimum amount of \$75 per hour. A third voucher did not have recorded time and was compensated \$400.

With the exception of the one voucher with no time recorded, the attorneys are submitting vouchers with both in-court time and out-of-court time listed but without requested payment amount. However, it appears the judges are authorizing flat fee rates regardless of the hours reported.

Of the 31 vouchers reviewed, two were related to County Court cases and 29 were related to District Court cases. The two County Court cases were each compensated at a flat rate of \$300. The District Court cases were paid as follows: 21 vouchers were paid \$650, four were paid \$400, two were paid \$300, one pre-indictment case was paid \$200, and one case was paid at a rate of \$100 per hour for 16 hours of in-court time and \$75 per hour for out-of-court time. Although it was noted that one voucher for \$400 was for a dismissed case and another for \$300 was a second case for a defendant, these factors do not appear to explain all the varying amounts for the felony level cases. Also, flat fees are not listed on the published fee schedule included in the county's indigent defense plan.

Additionally, TIDC's Indigent Defense Plan Instructions asked the judges to consider the *Wice* decision in setting the fee schedule. Following are those instructions:

*NEW Attorney Fee Schedule Information/Wice decision\*Judges should also review and amend, as needed, their attorney fee schedules to comply with the Court of Criminal Appeals opinion In re State ex rel. Wice v. Fifth Judicial Dist. Court of Appeals, 2018 Tex. Crim. App. LEXIS 1121. The majority opinion by Judge Newell was issued on November 21, 2018.*

*The Court of Criminal Appeals held that a local rule authorizing the trial court to “opt out” of its own fee schedule conflicts with a statute (Article 26.05, Code of Criminal Procedure) that requires payment according to that fee schedule. The decision has implications for fee schedules across the state since many would permit payments outside of the established flat or hourly fees provided. Examples of potentially suspect language in fee schedules include provisions such as the following:*

- “For good cause or exceptional circumstances, an appointed attorney may request payment at a rate above the rates specified ..., subject to review and approval by the judge presiding over the case.”*
- “The Court may deviate from this schedule for good cause.”*
- “Judge may deviate from above schedule in Judge's discretion.”*
- “In the interest of justice, for just cause, or in exceptional cases, the Court in its discretion may approve fees that differ from this schedule.”*

*According to the Court's opinion in Wice, all portions of a fee schedule should state reasonable fixed rates or minimum and maximum hourly rates in line with Article 26.05, Code of Criminal Procedure. Judges should review their attorney fee schedules used in criminal and juvenile cases. Any fee schedules that are revised should be submitted with your indigent defense plans using the “Forms” tab.*

The judges appear to be following a flat rate fee schedule that also provides a minimum and maximum hourly rate, but it needs to be formalized and published to comply with article 26.05 of the Code of Criminal Procedure.

### **Recommendation:**

Judges should review the fee schedules and take formal action, if necessary, to adopt a new fee schedule that is consistent with current payment practices in accordance with the requirements of CCP Article 26.05(b) and current case law.

### **County Response**

#### **Fisher County Action Plan**

*Judge Harrison reviewed and updated the fee schedule to support the County's current payment practice. The County Auditors office will verify that the approved payment amounts are within the fee schedule structure.as vouchers are paid. The new fee schedule has been posted on the county's website and uploaded to the Indigent Defense Plan on the TIDC data site.*

**Contact person(s):** *Becky Mauldin, Fisher County Auditor*

**Completion date:** *March 30,2023*

### **Conclusion**

TIDC appreciated the professionalism and assistance provided by Fisher County officials and staff.

# APPENDICES



## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>FISHER COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Population Estimate	3,708	3,897	3,897
Juvenile Assigned Counsel	\$0	\$0	\$0
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$9,950	\$4,250	\$19,275
Adult Misdemeanor Assigned Counsel	\$1,500	\$350	\$600
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$900
Expert Witness	\$0	\$0	\$0
Other Direct Litigation	\$0	\$0	\$0
Total Court Expenditures	\$11,450	\$4,600	\$20,775
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$1,031	\$1,000	\$1,000
Total Public Defender Expenditures	NA	NA	NA
Total Court and Administrative Expenditures	\$12,481	\$5,600	\$21,775
Formula Grant Disbursement	\$5,600	\$12,481	\$7,076
Reimbursement of Attorney Fees	\$2,027	\$2,333	\$3,105
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	NA	NA	NA
Total Assigned Counsel Cases	21	9	32

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Fisher County</b>				
<b>Year</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>Texas 2021</b>
Population (Non-Census years are estimates)	3,708	3,897	3,897	29,149,480
Felony Charges Disposed (from OCA report)	24	9	36	233,848
Felony Cases Paid	16	8	31	179,017
% Felony Charges Defended with Appointed Counsel	67%	89%	86%	77%
Felony Trial Court-Attorney Fees	\$9,950	\$4,250	\$19,275	\$117,687,277
Total Felony Court Expenditures	\$9,950	\$4,250	\$20,175	\$129,509,185
Misdemeanor Charges Disposed (from OCA report)	60	50	58	329,309
Misdemeanor Cases Paid	5	1	1	143,702
% Misdemeanor Charges Defended with Appointed Counsel	8%	2%	2%	44%
Misdemeanor Trial Court Attorney Fees	\$1,500	\$350	\$600	\$36,970,435
Total Misdemeanor Court Expenditures	\$1,500	\$350	\$600	\$37,596,320
Juvenile Charges Added (from OCA report)	0	0	1	15,024
Juvenile Cases Paid	0	0	0	22,404
Juvenile Attorney Fees	\$0	\$0	\$0	\$8,221,663
Total Juvenile Expenditures	\$0	\$0	\$0	\$8,392,554
Total Attorney Fees	\$11,450	\$4,600	\$19,875	\$166,177,254
Total ID Expenditures	\$12,481	\$5,600	\$21,775	\$277,829,412
Increase in Total Expenditures over 2001 Baseline	-13%	-61%	52%	213%
Total ID Expenditures per Population	\$3.37	\$1.44	\$5.59	\$9.52
Commission Formula Grant Disbursement	\$7,076	\$12,481	\$5,600	\$21,929,443
Cost Recouped from Defendants	\$2,027	\$2,333	\$3,105	\$9,536,138

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 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

The Honorable Ken Holt  
Fisher County Judge  
112 N. Concho  
PO Box 306  
Roby, TX 79543  
[fishercountyjudge@yahoo.com](mailto:fishercountyjudge@yahoo.com)

The Honorable Glen N. Harrison  
Local Administrative District Judge  
32nd District Court  
100 E. Third, Ste. 204A  
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[court32@co.nolan.tx.us](mailto:court32@co.nolan.tx.us)

The Honorable David C. Hall  
Local Administrative Statutory County Court Judge  
100 E. Third Dt., Room 107  
Sweetwater, TX 79556  
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The Honorable Whitley May  
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