



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Irion County, Texas

FY 2019 Indigent Defense Expenses

Final Report

October 21, 2020

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal desk monitoring review of Irion County. The review began on February 7, 2020 and follow-up email exchanges continued thru June 9, 2020 to complete the record review. 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, 2018 through September 30, 2019 (FY 2019).

SUMMARY OF FINDINGS

- Attorney CLE hours are not maintained to verify attorney eligibility to receive appointments.
- The FY 2019 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided.

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 FY2019. The records reviewed were provided by the Irion 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 emailed with the County Treasurer and the District Judge. The fiscal monitor reviewed

- Paid attorney fee vouchers;
- General ledger transactions provided by the Irion County auditor's office.
- IDER;
- Attorney fee schedule;
- Attorney applications and CLE documentation; and
- The County's local indigent defense plan filed with TIDC

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Irion County was formed by the Legislature in 1889 by splitting up sections of Tom Green County. The County is named for Robert Anderson Irion, a secretary of state of the Republic of Texas.

Irion County is located on the Edwards Plateau and is part of the San Angelo, Texas, Metropolitan Statistical Area. Current population is estimated at 1,652. The county seat is Mertzon. Irion County occupies an area of 1,052 square miles, of which .07 square miles is water. The County is bordered by Crockett, Reagan, Schleicher, and Tom Green Counties.

Irion County is served by the 51st District Court and a 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 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.

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 FY 2019 indigent defense on-line grant application to assist in the provision of indigent defense services. Irion County met the formula grant eligibility requirements and was awarded \$6,497 for formula grant funding.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Title 1, Texas Administrative Code (TAC) rule §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, Texas Criminal Code of Procedures(CCP) may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC rule §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides that an attorney is eligible if the attorney is board certified in criminal law or juvenile law.

Of the four attorneys that accepted appointed cases in FY 2019, the latest CLE hours documented were in 2016 and 2017. The County could not document that attorneys assigned criminal cases had met the current years CLE requirements to be eligible for appointment. The County may have made ineligible payments to these attorneys. (TAC rule §174.4 does allow for emergency appointment when no attorney meeting the CLE requirements is available.)

Recommendation:

The County must implement a procedure to verify that all attorneys included on the current appointment list have met the current year’s CLE requirements.

County Response

The current attorney files have been updated with verified CLE hours.

Judge Dusek would like to emphasize that the attorneys were in compliance with CLE requirements.

Irion County Action Plan

Judge Dusek of the 51st District court will coordinate with administrative judges of each of the 7 counties that is covered by the court and will write a plan that ensures each county verifies CLE hours annually.

Attorney on the felony list will have updated CLE hours verification performed by the District Court.

Any attorney that is only on the misdemeanor list will have CLE hours verified by the county judge.

Contact person(s): *Judge Dusek, 51st Court District Judge and Molly Criner, County Judge*

Completion date: *Current CLE hours verification is completed.*

Finding Two

Under Section §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. Irion County prepared and submitted the FY 2019 IDER in accordance with Texas Government Code Section §79.036(e); however, the reported amounts contained an error based on the financial data provided.

Specifically, reimbursement to attorneys for out-of-pocket expenditures are being categorized as attorney fees instead of other litigation expenses. TIDC reviewed five vouchers for payments to attorneys appointed in Irion County. Four of the vouchers were paid based on a flat fee rate. On the fifth voucher, the attorney requested to be paid for 3 hours at \$125 per hour and an additional travel reimbursement of \$51. The total amount paid to the attorney was classified as attorney fees, however the \$51 reimbursement should have been reported in the “other litigation expense” category.

Recommendation:

The County must develop procedures to distinguish attorney fees from reimbursements to attorneys for other eligible expense categories to facilitate separate classification of expenditures when preparing the IDER.

County Response

Irion County Action Plan

To make sure that Irion County files the appropriate attorney costs on the Indigent Defense Report correctly the County Treasurer, Carolyn Huelster, will pull and review all invoices paid to Indigent Defense Attorneys to distinguish where each expenditure should be filed on the report accordingly to its specific expenditure line.

Contact person(s): *County Treasurer, Carolyn Huelster*

Completion date: *August 4, 2020*

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

IRION COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2017	2018	2019
Population Estimate	1,677	1,455	1,652
Juvenile Assigned Counsel	\$150	\$0	\$0
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$4,406	\$16,828	\$3,426
Adult Misdemeanor Assigned Counsel	\$2,160	\$0	\$0
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$2,700	\$0
Expert Witness	\$1,000	\$1,000	\$0
Other Direct Litigation	\$0	\$0	\$0
Total Court Expenditures	\$7,716	\$20,528	\$3,426
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$1,000	\$1,000	\$1,000
Total Court and Administrative Expenditures	\$8,716	\$21,528	\$4,426
Formula Grant Disbursement	\$4,250	\$5,986	\$6,497
Reimbursement of Attorney Fees	\$0	\$0	\$0
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Assigned Counsel Cases	9	4	4

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Irion County				
Year	2017	2018	2019	Texas 2019
Population (Non-Census years are estimates)	1,677	1,455	1,652	28,901,062
Felony Charges Added (from OCA report)	4	7	8	295,010
Felony Cases Paid	4	4	4	222,860
% Felony Charges Defended with Appointed Counsel	100%	57%	50%	76%
Felony Trial Court-Attorney Fees	\$4,406	\$16,829	\$3,426	\$143,210,108
Total Felony Court Expenditures	\$5,406	\$20,529	\$3,426	\$160,275,769
Misdemeanor Charges Added (from OCA report)	52	54	11	450,080
Misdemeanor Cases Paid	2	0	0	209,641
% Misdemeanor Charges Defended with Appointed Counsel	4%	0%	0%	47%
Misdemeanor Trial Court Attorney Fees	\$2,160	\$0	\$0	\$47,236,136
Total Misdemeanor Court Expenditures	\$2,160	\$0	\$0	\$47,954,642
Juvenile Charges Added (from OCA report)	0	0	0	27,346
Juvenile Cases Paid	3	0	0	39,709
Juvenile Attorney Fees	\$150	\$0	\$0	\$10,795,227
Total Juvenile Expenditures	\$150	\$0	\$0	\$11,236,143
Total Attorney Fees	\$6,716	\$16,829	\$3,426	\$206,610,474
Total ID Expenditures	\$8,716	\$21,529	\$4,426	\$303,021,373
Increase in Total Expenditures over Baseline	211%	668%	58%	242%
Total ID Expenditures per Population	\$5.20	\$14.80	\$2.68	\$10.48
Commission Formula Grant Disbursement	\$4,250	\$5,986	\$6,497	\$23,290,906
Cost Recouped from Defendants	\$0	\$0	\$0	\$9,888,967

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
- FY2019 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/58218/fy19-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

The Honorable Molly Criner
Irion County Judge
P.O. Box 770
Mertzon, TX 76941
m.crinier@co.irion.tx.us

The Honorable Carmen Symes Dusek
Local Administrative District Judge
51st District Court
112 W. Beauregard
San Angelo, TX 76903-5850
carmen.dusek@co.tom-green.tx.us

Ms. Carolyn H. Huelster
Irion County Treasurer
P.O. Box 622
209 N. Parkview
Mertzon, TX 76941
carolyn.huelster@co.irion.tx.us

Mr. Geoffrey Burkhart
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
Grants Program Manager, Texas Indigent Defense Commission
209 W. 14th Street, Room 202
Austin, TX 78701