



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Lipscomb County, Texas

FY 2014 Indigent Defense Expenses

Final Report

November 23, 2015

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EXECUTIVE SUMMARY

Lipscomb County's fiscal monitoring desk review began on February 2, 2015. 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, 2013 to September 30, 2014 (FY2014) was reviewed as part of the fiscal monitoring desk review process.

Summary of Findings

- Errors were detected within the county's FY2014 Indigent Defense Expenditure Report (IDER)
- Attorney Fee Vouchers did not include the amount requested by the attorney or the itemization that is needed to comply with Article 26.05(c), Code of Criminal Procedure
- Attorney CLE hours are not maintained to verify attorney qualifications

Objective

The objectives of this review were to:

- 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 services;
- 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 FY2014. Records provided by the Lipscomb County Treasurers were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor talked with the county treasurer, the county judge, and the district judge. The fiscal monitor also reviewed:

- 100% of the paid attorney fees vouchers for verification;
- General ledger transactions provided by the Lipscomb County Treasurer;
- IDER and attorney fee schedule;
- public attorney appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- the county's local indigent defense plan.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Lipscomb County is located in the Texas Panhandle and borders the state of Oklahoma. The County occupies an area of 932 square miles, and serves an estimated population of 3,502. The County is a political subdivision of the State of Texas. Neighboring counties are Hemphill, Roberts and Ochiltree in Texas, Beaver and Ellis Counties in Oklahoma.

Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82nd 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 2014 indigent defense on-line grant application to assist in the provision of indigent defense services. Lipscomb County met the formula grant eligibility requirements and was awarded \$7,128.00 for FY 2014.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

The Indigent Defense Expenditure Report (IDER) required under Texas Government Code §79.036(e) requires counties to report the amount expended for indigent defense in each court and in each case in which appointed counsel are paid. The passage of House Bill 1318 of the 83rd Legislature amends the Texas Government Code §79.036 to require counties to further provide this information in detail by attorney.

Upon reconciling the County's FY 2014 IDER to the data provided by the county it was noted that errors were made in this reporting. The total amount expended by court appears to have been correctly reported. The number of cases was underreported by two (2) cases. There were (17) seventeen cases reported as paid for FY2014. The data indicated (19) nineteen cases were paid. Additionally the attorney fees reported by court did not reconcile with the attorney detail report. Specifically, the county court reported \$4,500.00 in attorney fees, however the detail by attorney report listed \$4,614.92 in attorney fees. It also appeared that two different attorneys were paid by the county court, yet only one was listed on the attorney detail report.

Recommendation:

The person preparing the IDER should review the data summarized above in order to identify the source of the errors described and to identify procedures to ensure accuracy on future reports. The Indigent Defense Expenditure Report Procedure Manual is a good resource and can be found at <http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>.

County Response:

Corrected

Lipscomb County Action Plan:

The treasurer has implemented procedures to ensure that number of cases listed on the voucher is consistent with payments made and that all cases listed for payment are accounted for and reconciled on the IDER in all reports.

Contact person(s): Diana Schoenhals, County Treasurer

Completion date: 10-16-15

Finding Two

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

All nineteen (19) attorney fee vouchers for FY 2014 were reviewed. Seven (7) of the vouchers had no itemization of the services performed and/or no request for an amount to be paid. In addition, one of these seven voucher did not have an attorney signature. An eighth voucher was approved for an amount different than the amount requested without an explanation from the judge of the reason for the difference. These eight attorney fee vouchers did not meet the statutory requirements of CCP Article 26.05(c).

Recommendation:

All but one of the vouchers without a requested fee amount were from one attorney. Please require all the attorneys to complete the voucher with the amount requested and itemization of services performed. Also, a review procedure should be implemented to ensure that an explanation is included for any variance between the requested amount and the amount approved.

County Response:

Corrected

Lipscomb County Action Plan

District and County Judges will require all vouchers include requested payment amount and have a more detailed itemization of services performed prior to approval for payment. Treasurer will monitor for compliance.

Contact person(s): Willis Smith, County Judge

Completion date: 10-16-15

Finding Three

Texas Administrative Code (TAC) rule §174.1 provides that “ an attorney who is otherwise eligible for appointment under Article 26.04, 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: “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 an attorney is eligible if the attorney is board certified in criminal law or juvenile law, respectively.

The County could not document that attorneys had met the CLE requirements to be eligible for appointments. 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:

Corrected

Lipscomb County Action Plan

Judge Emmert (District Court) approves all attorneys for appointment in the 31st Judicial District. His office will implement procedures to verify and trace CLE requirements for approved appointment list. He has implemented this policy.

Contact person(s): Steven Emmert, District Judge

Completion date: Before 09-01-15

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

LIPSCOMB COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2012	2013	2014
Population Estimate	3363	3438	3,502
Juvenile Assigned Counsel	\$0.00	\$0.00	\$0.00
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$4,940.00	\$6,125.00	\$6,140.00
Adult Misdemeanor Assigned Counsel	\$2,330.60	\$1,000.00	\$4,000.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$0.00	\$0.00	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$0.00	\$0.00
Expert Witness	\$0.00	\$0.00	\$0.00
Other Direct Litigation	\$100.00	\$308.40	\$1,183.96
Total Court Expenditures	\$7,370.60	\$7,433.40	\$11,323.96
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$1,000.00	\$1,000.00	\$1,000.00
Total Court and Administrative Expenditures	\$8,370.60	\$8,433.40	\$12,323.96
Formula Grant Disbursement	\$6,409.00	\$6,640.00	\$8,071.00
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$0.00	\$0.00	\$0.00
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	10	16	17

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Lipscomb County				
Year	2012	2013	2014	Texas 2014
Population (Non-Census years are estimates)	3,363	3,438	3,502	26,642,612
Felony Charges Added (from OCA report)	5	8	11	270,401
Felony Cases Paid	6	12	10	192,732
% Felony Charges Defended with Appointed Counsel	120.00%	150.00%	90.91%	71.28%
Felony Trial Court-Attorney Fees	\$4,940.00	\$6,125.00	\$61,400.00	\$104,577,627.50
Total Felony Court Expenditures	\$5,040.00	\$6,433.40	\$7,107.96	\$121,013,238.56
Misdemeanor Charges Added (from OCA report)	26	23	16	530,335
Misdemeanor Cases Paid	4	4	7	223,043
% Misdemeanor Charges Defended with Appointed Counsel	15.38%	17.39%	43.75%	42.06%
Misdemeanor Trial Court Attorney Fees	\$2,330.60	\$1,000.00	\$4,000.00	\$38,286,859.48
Total Misdemeanor Court Expenditures	\$2,330.60	\$1,000.00	\$4,216.00	\$39,406,492.35
Juvenile Charges Added (from OCA report)	0	0	0	31,996
Juvenile Cases Paid	0	0	0	45,340
Juvenile Attorney Fees	\$0.00	\$0.00	\$0.00	\$10,901,190.88
Total Juvenile Expenditures	\$0.00	\$0.00	\$0.00	\$11,597,789.07
Total Attorney Fees	\$7,270.60	\$7,125.00	\$10,140.00	\$159,310,349.08
Total ID Expenditures	\$8,370.60	\$8,433.40	\$12,323.96	\$229,943,368.55
Increase In Total Expenditures over Baseline	58.68%	59.87%	133.63%	159.20%
Total ID Expenditures per Population	\$2.49	\$2.45	\$3.52	\$8.63
Commission Formula Grant Disbursement	\$3,095.60	\$6,640.00	\$8,071.00	\$36,739,158.25
Commission Equalization Grant Award				

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
- FY2014 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>

APPENDIX C – DISTRIBUTION LIST

The Honorable Willis V. Smith
Constitutional County Judge
P.O. Box 69
Lipscomb, TX 79056-0069

The Honorable Steven R. Emmert
Local Administrative District Court
31st Judicial District Court
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Wheeler, TX 79096-0766

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