



**TEXAS INDIGENT DEFENSE  
COMMISSION**

**Fiscal Monitoring Report**

**Denton County, Texas**

**FY 2014 Indigent Defense Expenses**

**Final Report**

**June 5, 2015**

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## **EXECUTIVE SUMMARY**

Denton County's on-site fiscal monitoring visit was conducted March 23-27, 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 during the fiscal monitoring visit.

### **Summary of Findings**

- General court expenditures were included with the criminal indigent defense expenses in the FY 2014 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e).
- Written explanation from judges for variance in amounts approved and amounts requested on attorney fee vouchers were not present as required by Article 26.05 (c) of the Texas Code of Criminal Procedures.
- The number of cases disposed during the year was underreported on the county's FY2014 IDER.
- Some indigent defense expenditures were mis-categorized and mis-reported as attorney fees.

### **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 Denton County Auditor's Office as well as records from the offices of the District Court Administrators, the Indigent Defense Coordinator, and the Juvenile Judge were reviewed.

### **Methodology**

To accomplish the objectives, the fiscal monitor met with the county auditor, the county judge, and the district judge. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- accounts payable ledger transactions provided by the Denton County Auditor's Office;
- 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

Denton County is part of the Dallas-Fort Worth-Arlington, Texas Metropolitan Statistical Area. The County occupies an area of 953 square miles, and serves an estimated population of 662,614. The County is a political subdivision of the State of Texas. Neighboring counties are Cooke, Grayson, Collin, Dallas, Tarrant and Wise.

### Commission Background

In January 2002, the 77<sup>th</sup> Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82<sup>nd</sup> 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. Denton County met the formula grant eligibility requirements and was awarded \$785,653.00 for FY 2014.

### Discretionary Grant

Denton County did not apply for a discretionary grant for the FY 2014; therefore grant funds were not available to review.

## DETAILED FINDINGS AND RECOMMENDATIONS

### Finding One

The County included some general court expenditures with the criminal indigent defense expenses in the FY 2014 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e). These general court expenditures included payments to a one-time special prosecutor and a one-time special court reporter; general government fees and charges other than attorney fees that were paid to other counties resulting from placement of defendants in mental health facilities and subsequent medication hearings; and psychiatric evaluations of defendants ordered by the judge or *prosecuting* attorney. Of the twelve (12) Expert Witness invoices reviewed six were requested by the defense attorney as evidenced by the bill to the attorney and attached approved court orders, the remaining six invoices were billed directly to the county suggesting the request for evaluation came from someone other than the defense attorney.

General court expenditures should not be included in the criminal indigent defense expense report. The IDER overstated the county's criminal indigent defense expenditures due to the inclusion of these general court costs. This could mean that the FY 2015 formula grant for Denton County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual: <http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>

### Recommendation:

The County should conduct a training session with appropriate personnel to understand when and what expenses are considered eligible as indigent defense expenditures. A miscellaneous general ledger account could be setup to capture those court expenditures that do not relate to indigent defense.

### County Response:

Denton County agrees that certain general court expenses were included in the 2014 IDER.

### Denton County Action Plan

We have reviewed the finding and received clarification that special prosecutor visiting judge, and certain psychiatric evaluations are not includable as indigent expenses. We have adjusted our procedures and will no longer include these.

Contact person(s): James Wells, Denton County Auditor

Completion date: 05/15/2015

## **Finding Two**

The County forms utilized for the attorney fee vouchers do not provide a space for the judge to write an explanation for any variance of the requested amount to the approved amount. Article 26.05 (c) of the Texas Code of Criminal Procedures, states “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.” Of the fifty-five (55) attorney fee vouchers reviewed for the district courts thirty-two (32) were paid an amount different from the requested amount with no explanation as to the reason for the difference. Of the fifty (50) attorney fee vouchers reviewed for the juvenile and county criminal courts five (5) were paid a different amount, however only one voucher recorded an explanation for the difference. Without the explanation for the difference the county is not in compliance with the statute.

## **Recommendation:**

Judges must document the reason(s) for approving an amount other than the billed amount. It is recommended that the county add space on the attorney fee vouchers forms for the judges to record such written explanation of differences. The Local Administrative District Judge has already approved this change for the District Court forms. However, it needs to be approved for the county criminal courts and juvenile court forms as well.

## **County Response:**

Denton County agrees with the finding that an explanation should be provided whenever a judge awards payment to an appointed attorney in variance to the requested amount.

## **Denton County Action Plan**

The attorney fee vouchers used by the courts have either been amended to include a space for the judges’ explanations when fee awards vary from the amount requested, or the courts have begun to use supplemental forms to document their reasons for varying the award.

**Contact person(s):** Sandra Hardy, District Court Administrator

**Completion date:** 05/15/2015

### **Finding Three**

The Indigent Defense Expenditure Report (IDER) required under Texas Government Code Section 79.036 (e) requires counties to report the number of indigent cases disposed at the time the cases are paid. Denton County has procedures to record each case listed on an attorney fee voucher into the accounting program which in turn is counted properly. However, an accounts payable clerk was informed that if a case was not listed with a proper case number it was not to be counted. Three attorney fee vouchers selected for review had cases reported that were not considered as a case for data entry. One District Court attorney fee voucher listed two cases but one was unfiled so that case was not considered. One Juvenile court attorney fee voucher listed three cases but two of the cases were dismissed so those two cases were not listed. The third attorney fee voucher was from a County Criminal Court and that voucher listed three cases but the third case was listed with the probable cause number so that case was not counted. The attorneys are reporting the cases that were assigned to them at the time of appointment. Based on the definition of a “case” and a “charge,” which can be found in the IDER manual, these cases need to be included in the count of cases disposed on the IDER. The County underreported the number of cases disposed by not including these unfiled and dismissed cases.

Please refer to the Indigent Defense Expenditure Report Procedure Manual for the definition of a “case”: <http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>

### **Recommendation:**

The County should inform the appropriate personnel what constitutes a case to be reported on the indigent defense expenditure report and oversee that these cases are being properly recorded.

### **County Response:**

Denton County agrees that our procedure for counting cases did not comply.

### **Denton County Action Plan**

As requested, we have reviewed the IDER Procedure Manual to better understand the definition of a "case". And we have adjusted our procedures to insure that our case counts comply with the manual in the future.

**Contact person(s):** James Wells, Denton County Auditor

**Completion date:** 11/01/2015

#### **Finding Four**

Some indigent defense expenditures were mis-categorized and mis-reported as attorney fees. A payment to an attorney for reimbursement of postage fees in the amount of \$122.89 was found on one invoice reviewed, and other direct litigation expenses in the amount of \$88.94 were found on another invoice selected for review. Although the published fee schedule indicates that the attorney fee rate is inclusive of all related expenditures these two expenditures were highlighted on the vouchers as additional expense and appears to be paid in addition to the hourly rates. These expenditures are for reimbursements of non-attorney fee expenses requested by the attorney on the submitted attorney fee voucher and were mistakenly aggregated with the attorney fees at the time of data entry. These amounts should be separately classified to a general ledger account with a separate title, such as "other direct litigation expense" for the proper reporting of indigent defense expenditures in accordance with Texas Government Code §79.036(e). These reimbursements should also not be included as attorney fees on the payments to individual attorneys on the new sections of the IDER detailing cases and total attorney fees paid to each attorney. The total indigent defense expenditure is not affected, but the classification of the expenditures is not properly reported.

#### **Recommendations:**

The County should create an additional general ledger account to capture the reimbursement expenditures for other direct litigation expenditures. The County should also develop procedures that would assist the data entry personnel to recognize the reimbursement expenditures that should be classified separately and set up a quality review process to assure compliance.

#### **County Response:**

Denton County agrees with the finding that in limited cases, some expenses were mis- categorized as "attorney fees".

#### **Denton County Action Plan**

We have revised our procedures so that our accounts payable staff members will code these expenses to line items other than attorney fees.

**Contact person(s):** James Wells, Denton County Auditor

**Completion date:** 5/15/2015



# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>DENTON COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Population Estimate	696,220	713,574	729,302
Juvenile Assigned Counsel	\$160,331.30	\$90,724.61	\$93,705.50
Capital Murder	\$2,643.75	\$10,958.75	\$53,373.50
Adult Non-Capital Felony Assigned Counsel	\$2,012,443.49	\$1,966,723.28	\$2,047,181.65
Adult Misdemeanor Assigned Counsel	\$1,067,180.83	\$1,184,274.18	\$1,174,761.79
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$47,383.56	\$32,367.86	\$38,337.05
Adult Misdemeanor Appeals	\$5,700.00	\$9,690.11	\$9,392.18
Licensed Investigation	\$57,169.63	\$47,914.25	\$61,871.09
Expert Witness	\$87,406.84	\$47,010.80	\$89,661.20
Other Direct Litigation	\$46,014.28	\$11,248.00	\$0.00
Total Court Expenditures	\$3,486,273.68	\$3,400,911.84	\$3,568,283.96
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$0.00	\$0.00	\$0.00
Total Court and Administrative Expenditures	\$3,486,273.68	\$3,400,911.84	\$3,568,283.96
Formula Grant Disbursement	\$289,207.00	\$422,578.00	\$785,653.00
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$427,233.99	\$430,076.41	\$362,773.54
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	6688	6835	6627

### Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

<b>Denton County</b>				
<b>Year</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>Texas 2014</b>
Population (Non-Census years are estimates)	696,220	713,574	729,302	26,642,612
Felony Charges Added (from OCA report)	3,199	2,982	2,830	270,401
Felony Cases Paid	2,301	2,263	2,266	192,710
% Felony Charges Defended with Appointed Counsel	71.93%	75.89%	80.07%	71.27%
Felony Trial Court-Attorney Fees	\$2,015,087.24	\$1,977,682.03	\$2,100,555.15	\$104,731,300.50
Total Felony Court Expenditures	\$2,124,956.08	\$2,054,983.78	\$2,216,918.45	\$121,166,911.56
Misdemeanor Charges Added (from OCA report)	9,724	10,155	9,585	530,335
Misdemeanor Cases Paid	3,770	4,190	3,976	223,043
% Misdemeanor Charges Defended with Appointed Counsel	38.77%	41.26%	41.48%	42.06%
Misdemeanor Trial Court Attorney Fees	\$1,067,180.83	\$1,184,274.18	\$1,174,761.79	\$38,291,610.73
Total Misdemeanor Court Expenditures	\$1,084,146.58	\$1,196,281.68	\$1,190,110.79	\$39,411,243.60
Juvenile Charges Added (from OCA report)	1,193	1,116	770	31,996
Juvenile Cases Paid	605	367	376	45,332
Juvenile Attorney Fees	\$160,331.30	\$90,724.61	\$93,705.50	\$10,901,190.88
Total Juvenile Expenditures	\$178,073.18	\$96,340.41	\$113,525.49	\$11,597,789.07
Total Attorney Fees	\$3,295,682.93	\$3,294,738.79	\$3,416,751.67	\$159,468,773.33
Total ID Expenditures	\$3,486,273.68	\$3,400,911.84	\$3,568,283.96	\$230,101,792.80
Increase In Total Expenditures over Baseline	114.56%	109.31%	119.61%	159.38%
Total ID Expenditures per Population	\$5.01	\$4.77	\$4.89	\$8.64
Commission Formula Grant Disbursement	\$289,207.00	\$422,578.00	\$785,653.00	\$36,739,158.25

**Indigent Defense Expenditure Reporting**

Source: Texas Indigent Defense Commission records

## **APPENDIX B – OBJECTIVE, SCOPE, METHODOLOGY and CRITERIA**

### **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.
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### **Scope**

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### **Methodology**

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- 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

### **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 Bruce McFarling  
Local Administrative District Judge  
1450 E. McKinney Street  
Denton, TX 76209-4524

The Honorable Kimberly McCary  
Chairman of the Juvenile Board  
210 S. Woodrow Lane  
Denton, TX 76205

Mr. James A. Wells  
County Auditor  
401 West Hickory, Suite 423  
Denton, TX 76201

Ms. Sandra Hardy  
District Court Administrator  
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Denton, TX 76209-4524

Ms. Rina Shelton  
Indigent Defense Coordinator  
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