



**TEXAS INDIGENT DEFENSE
COMMISSION**

Fiscal Monitoring Report

Hansford County, Texas

FY 2014 Indigent Defense Expenses

Final Report

February 12, 2016

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EXECUTIVE SUMMARY

Hansford County's fiscal monitoring desk review began on July 14, 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

- Attorney Fee Vouchers were not utilized as outlined in the counties indigent defense plan nor as required by Code of Criminal Procedures (CCP) Article 26.05(c).
- General Court Expenses were included on the Indigent Defense Expenditure Report (IDER).

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 Hansford County Auditor were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor talked with the county auditor, the county judge, and the district judge's court administrator. The fiscal monitor reviewed:

- a selection of the paid attorney fees vouchers for verification;
- General ledger transactions provided by the Hansford County Auditor;
- Indigent Defense Expenditure Report (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

Hansford County is located in the Texas Panhandle. The County occupies an area of 920 square miles, and serves an estimated population of 5,465. The County is a political subdivision of the State of Texas. Neighboring counties are Hutchinson, Ochiltree, Roberts and Sherman Counties in the State of Texas and Texas County in the State of 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. Hansford County met the formula grant eligibility requirements and was awarded \$10,809.00 for FY 2014.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

CCP Article 26.04(a) requires the courts to adopt and publish written countywide procedures for providing indigent defense services, commonly known as an indigent defense plan. As part of these procedures, the judges must adopt an attorney fee voucher form consistent with CCP Article 26.05(c). Government Code Section 79.036 requires that these countywide procedures be provided to the Commission biennially. Hansford County adopted and properly submitted these indigent defense plans. Each plan included an approved attorney fee voucher to be used for the respective level of court, however, the monitoring review revealed that the approved attorney fee voucher was not in use by the County. Instead, an “Order Compensating Attorney” was submitted by each court.

CCP Article 26.05 (c) reads in part “Each fee schedule....and shall provide a form for the appointed counsel to itemized 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...” 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.

The “Order Compensating Attorney” provides almost all the necessary information for the county auditor to prepare the IDER as required by rule §174.10, Title 1, Texas Administrative Code. However, it does not provide the attorney the opportunity to submit an itemized voucher as required by Article 26.05 (c) of the Texas Code of Criminal Procedure or to request a specific payment amount, which the judge may approve or disapprove also required by Article 26.05(c). It also does not provide the level of case detail the auditor needs to properly complete the IDER.

Recommendation:

The judges should review the attorney fee voucher form submitted as part of the indigent defense plan. The attorney fee voucher approved in the indigent defense plan does not provide for approval by the presiding judge nor does it provide space for an explanation for any variance from the billed amount that the judge may approve or disapprove under Article 26.05 (c) of the Texas Code of Criminal Procedure. The judges should review and implement procedures to include the submission of the attorney fee vouchers by the attorneys, a review and approval process by the presiding judges, and the submission to the auditor’s office for payment.

County Response:

See appendix C for copies of attached forms of 1. HANSFORD COUNTY, TEXAS - STANDING RULES AND ORDERS PROCEDURES FOR TIMELY AND FAIR APPOINTMENT OF COUNSEL FOR INDIGENT ACCUSED PERSONS 2. HANSFORD AND OCHILTREE COUNTIES, TEXAS – PLAN FOR APPOINTMENT OF COUNSEL FOR JUVENILES

Hansford County Action Plan

The Courts have implemented the use of voucher forms approved by the TIDC. Attorneys now submit their claims for fees and expenses on these forms directly to the Courts. The Courts then approve or disapprove the claims with appropriate comments. The vouchers, by themselves, are merely a form of invoice. They cannot serve as an order of payment. The Courts, as a final step in the compensation process, issue Orders of Compensation directing the Auditor to pay counsel.

Contact person(s): Cindy Scribner

Completion date: 11/16/2015

Finding Two

Texas Government Code §79.036(e) requires each county to prepare and send to the Commission with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services (i.e. the Indigent Defense Expenditure Report or IDER).

During the review it was revealed that one of the “Order Compensating Attorney” orders was indicated as payment to a defense attorney for services as a special prosecutor. In the role of a prosecuting attorney this attorney was not performing the duties of an indigent defense attorney. Therefore the cost is considered a general court expense and is not an allowable expense on the IDER.

The amount reported for the special prosecutor resulted in an overstatement of the amount paid by the county to defend the indigent defendants on the IDER.

Recommendation:

A defense attorney requested to fulfill the role of a prosecuting attorney is probably an unusual event in a smaller jurisdiction so to suggest training for the data entry clerk would be impractical. However, to comply with CCP Article 26.05(c) the indigent defense attorneys should submit an attorney fee voucher listing each case in which they represent an indigent defendant. The defense attorney acting in the role of prosecuting attorney should not submit the same type voucher. The different type of voucher could serve as a red flag that the payment is different from the standard indigent defense expense and should trigger questions as to which general ledger code should be used .

County Response:

Although the use of a defense attorney for prosecuting attorney is unusual, our goal is to implement a payment voucher which is more readily identifiable when processing payables in this situation.

Hansford County Action Plan

Our plan is to practice more diligence in determining the order of the Judge, and separating prosecuting attorney orders from defense attorney orders to pay, so as not to include the prosecuting attorney fees paid as defense attorney on the Indigent Defense Expenditure Report.

Contact person(s): Cindy Scribner _____

Completion date: 01/06/2016 _____

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

HANSFORD COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2012	2013	2014
Population Estimate	5,627	5,640	5,465
Juvenile Assigned Counsel	\$0.00	\$4,250.00	\$2,325.00
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$15,210.00	\$10,200.00	\$33,147.50
Adult Misdemeanor Assigned Counsel	\$6,900.00	\$3,500.00	\$7,250.00
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	\$3,097.50	\$0.00
Other Direct Litigation	\$0.00	\$0.00	\$56,500.00
Total Court Expenditures	\$22,110.00	\$21,047.50	\$99,222.50
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$4,713.00	\$1,665.00	\$1,665.00
Total Court and Administrative Expenditures	\$26,823.00	\$22,712.50	\$100,887.50
Formula Grant Disbursement	\$7,408.00	\$8,405.00	\$10,809.00
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$4,113.18	\$3,473.21	\$8,322.80
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	38	27	62

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Hansford County				
Year	2012	2013	2014	Texas 2014
Population (Non-Census years are estimates)	5,627	5,640	5,465	26,642,612
Felony Charges Added (from OCA report)	1	31	51	270,401
Felony Cases Paid	11	10	31	192,732
% Felony Charges Defended with Appointed Counsel	1,100.00%	32.26%	60.78%	71.28%
Felony Trial Court-Attorney Fees	\$15,210.00	\$10,200.00	\$33,147.50	\$104,577,627.50
Total Felony Court Expenditures	\$15,210.00	\$13,297.50	\$89,647.50	\$121,013,238.56
Misdemeanor Charges Added (from OCA report)	113	60	107	530,335
Misdemeanor Cases Paid	27	13	28	223,043
% Misdemeanor Charges Defended with Appointed Counsel	23.89%	21.67%	26.17%	42.06%
Misdemeanor Trial Court Attorney Fees	\$6,900.00	\$3,500.00	\$7,250.00	\$38,286,859.48
Total Misdemeanor Court Expenditures	\$6,900.00	\$3,500.00	\$7,250.00	\$39,406,492.35
Juvenile Charges Added (from OCA report)	0	6	4	31,996
Juvenile Cases Paid	0	5	4	45,340
Juvenile Attorney Fees	\$0.00	\$4,250.00	\$2,325.00	\$10,901,190.88
Total Juvenile Expenditures	\$0.00	\$4,250.00	\$2,325.00	\$11,597,789.07
Total Attorney Fees	\$22,110.00	\$17,950.00	\$42,722.50	\$159,310,349.08
Total ID Expenditures	\$26,823.00	\$22,712.50	\$100,887.50	\$229,943,368.55
Increase In Total Expenditures over Baseline	88.17%	59.33%	607.73%	159.20%
Total ID Expenditures per Population	\$4.77	\$4.03	\$18.46	\$8.63
Commission Formula Grant Disbursement	\$7,408.00	\$8,405.00	\$10,809.00	\$36,739,158.25

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 – COUNTY RESPONSE FORMS


HANSFORD COUNTY, TEXAS
STANDING RULES AND ORDERS FOR
PROCEDURES FOR TIMELY AND FAIR APPOINTMENT OF COUNSEL
FOR INDIGENT ACCUSED PERSONS
FY 2016 & 2017


Whereas pursuant to the requirements of the Texas Code of Criminal Procedure and the Texas Government Code, the County Court Judge and the 84th District Court Judge for Hansford County, Texas are required to adopt a plan to furnish counsel to indigent accused persons; and

Whereas prior plans have been adopted and submitted to the Texas Task Force for Indigent Defense and these plans and all required supplementations now appear on the website for the Task Force and are published on the website as the current plan for appointed counsel;

RESOLVED, that the contents of the Hansford County and District Court Plan FY 2016 & 2017, together with the attached forms and Appointed Counsel Fee Schedule, be adopted as the Hansford County, Texas, Standing Rules and Orders for Procedures For Timely and Fair Appointment of Counsel for Indigent Accused Persons FY 2016 & 2017.

This plan is adopted, to be effective January 1, 2016, by resolution of the County Court Judge and the 84th District Court Judge for Hansford County, Texas, duly passed, signed and ORDERED this the 20th day of October, 2015.


Honorable Benny Wilson
Hansford County Court Judge


Honorable William D. Smith
84th District Court Judge

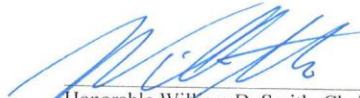
HANSFORD AND OCHILTREE COUNTIES, TEXAS
PLAN FOR APPOINTMENT OF COUNSEL
FOR JUVENILES
FY 2016 & 2017

Whereas pursuant to the requirements of the Texas Family Code and the Texas Government Code, the Juvenile Probation Board of Hansford and Ochiltree Counties, Texas is required to adopt a plan to furnish counsel to juveniles whose parent(s) or guardian(s) are indigent in judicial proceedings; and


Whereas prior plans have been adopted and submitted to the Texas Task Force for Indigent Defense and these plans and all required supplementations now appear on the website for the Task Force and are published on the website as the current plan for appointed counsel;

RESOLVED, that the contents of the Hansford and Ochiltree Counties Juvenile Board Plan FY 2016 & 2017, together with the attached forms and Appointed Counsel Fee Schedule, be adopted as the Hansford and Ochiltree Counties, Texas, Plan for Appointment of Counsel for Juveniles FY 2016 & 2017.


This plan is adopted, to be effective January 1, 2016, by resolution of the Juvenile Probation Board of Hansford and Ochiltree Counties, Texas, duly passed this the 20th day of October, 2015.



Honorable William D. Smith, Chairman
84th District Court Judge



Honorable Earl McKinley
Ochiltree County Judge



Honorable Benny Wilson
Hansford County Judge

APPENDIX D – DISTRIBUTION LIST

The Honorable Benny D. Wilson
Constitutional County Judge
Hansford County
#16 N.W. Court
Spearman, TX 79081

The Honorable William D. Smith
Local Administrative District Court
84th Judicial District Court
P.O. Drawer 3437
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