



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Marion County, Texas**

**FY 2016 Indigent Defense Expenses**

**Final Report**

**May 15, 2018**

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## EXECUTIVE SUMMARY

Marion County's fiscal desk monitoring began on October 24, 2017. Follow-up email exchanges continued to January 30, 2018 to complete the record review. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with Texas Indigent Defense Commission (TIDC) grant terms and conditions.

This fiscal desk monitoring review examined expenditures from October 1, 2015 to September 30, 2016 (FY2016).

### SUMMARY OF FINDINGS

- Records are not maintained to verify attorney qualifications to receive appointments.

### 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 fiscal 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 grant during FY2016. Records provided by the Marion County auditor's office were reviewed. This review did not include compliance with other statutory indigent defense program requirements.

### METHODOLOGY

To accomplish the objectives, the fiscal monitor examined information provided by the County Auditor. The fiscal monitor reviewed:

- random samples of paid attorney fee vouchers;
- general ledger transactions;
- the Indigent Defense Expenditure Report;
- attorney contracts;
- public notice of application for contract attorneys;
- attorney criminal and juvenile continuing legal education documentation; and
- the county's indigent defense plan filed with TIDC.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Marion County is in northeast Texas bordering Louisiana and was formed in 1860 from a portion of Cass County. The county is named after Frances Marion, a Revolutionary War general from South Carolina nicknamed the “Swamp Fox” The county seat is Jefferson. Marion County serves an estimated population of 10,398 and occupies an area of 420 square miles, of which 39 square miles is water. The neighboring counties are Cass, Harrison, Upshur and Morris Counties in Texas and Caddo Parish in Louisiana.

### 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 effective September 1, 2011. The Commission 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 2016 on-line formula grant application to assist in the provision of indigent defense services. Marion County met the formula grant eligibility requirements and was awarded \$14,295 for FY 2016.

### Discretionary Grant

Marion County did not apply for a discretionary grant for FY 2016; therefore, no discretionary grant funds were reviewed.

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

**Marion County did not have documentation that attorneys paid for indigent defense services completed minimum continuing legal education (CLE) requirements.**

Title 1, Texas Administrative Code (TAC) rules §174.1 and §174.2 outline the minimum CLE requirements attorneys must obtain to be appointed to represent defendants in criminal and juvenile cases. These rules are included in the Marion County's indigent defense plans approved by the judges. The contract between the county and the contract attorneys indicates that the attorneys will provide documentation of the number of continuing legal education hours to the county judge. However, the supporting documentation to demonstrate that minimum CLE hours have been met by the contract attorneys was not maintained.

Because the County did not have current validation of eligibility for those attorneys, Marion County may have paid attorneys when they were not eligible to receive payments.

### **Recommendation:**

The county must implement a procedure that verifies all attorneys have met the annual CLE requirement and maintain the documentation per the retention schedule.

### **County Response:**

*This was an oversight on our part. The hours were to be reported to the County Judge and we were not collecting them.*

### **Marion County Action Plan**

*The Attorney contracts have been changed and readopted to notate a specific number of hours and area of study for each 12-month period. These hours will be collected by the County Auditor in the future. I have notated a reminder on my calendar in October to collect this information.*

**Contact person(s):** *Shanna Solomon, County Auditor*

**Completion date:** *The contracts were reapproved in Jan 2018*

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>MARION COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Population Estimate	10,360	10,140	10,398
Juvenile Assigned Counsel	\$0	\$1,458	\$1,083
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$45,638	\$44,961	\$37,888
Adult Misdemeanor Assigned Counsel	\$34,549	\$33,874	\$41,435
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$5,265	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$0	\$0	\$0
Other Direct Litigation	\$4,924	\$11,284	\$0
Total Court Expenditures	\$85,112	\$97,358	\$80,406
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$85,112	\$97,358	\$80,406
Formula Grant Disbursement	\$19,457	\$14,081	\$14,295
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$13,723	\$15,623	\$13,796
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Assigned Counsel Cases	243	246	213

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Marion County</b>				
<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Texas 2016</b>
Population (Non-Census years are estimates)	10,360	10,140	10,398	27,725,192
Felony Charges Added (from OCA report)	176	141	149	276,879
Felony Cases Paid	134	136	100	200,580
% Felony Charges Defended with Appointed Counsel	76%	96%	67%	72%
Felony Trial Court-Attorney Fees	\$45,638	\$44,961	\$37,888	\$115,192,600
Total Felony Court Expenditures	\$50,562	\$56,245	\$37,888	\$131,727,198
Misdemeanor Charges Added (from OCA report)	271	152	221	481,253
Misdemeanor Cases Paid	109	104	110	214,674
% Misdemeanor Charges Defended with Appointed Counsel	40%	68%	50%	45%
Misdemeanor Trial Court Attorney Fees	\$34,549	\$33,874	\$41,435	\$40,245,051
Total Misdemeanor Court Expenditures	\$34,549	\$33,874	\$41,435	\$41,003,480
Juvenile Charges Added (from OCA report)	4	5	6	27,307
Juvenile Cases Paid	0	4	3	41,989
Juvenile Attorney Fees	\$0	\$1,458	\$1,083	\$11,119,664
Total Juvenile Expenditures	\$0	\$1,458	\$1,083	\$11,424,425
Total Attorney Fees	\$80,188	\$85,558	\$80,406	\$172,232,454
Total ID Expenditures	\$85,112	\$97,358	\$80,406	\$247,730,647
Increase in Total Expenditures over Baseline	63%	86%	54%	179%
Total ID Expenditures per Population	\$8.22	\$9.60	\$7.73	\$8.94
Commission Formula Grant Disbursement	\$19,457	\$14,081	\$14,295	\$25,056,873
Cost Recouped from Defendants	\$13,723	\$15,623	\$13,796	\$11,055,035

*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
- FY2016 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/48321/fy16-ider-manual.pdf>

## APPENDIX C – DISTRIBUTION LIST

Honorable Lex Jones  
Constitutional County Judge  
Marion County  
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Jefferson, TX 75657

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Local Administrative District Court  
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