



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Young County, Texas**

**FY 2016 Indigent Defense Expenses**

**Final Report**

**November 1, 2018**

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## EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal desk monitoring review of Young County which began on October 24, 2017. Follow-up email exchanges continued through February 6, 2018 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 the TIDC grants.

TIDC reviewed the expenditure period of October 1, 2015 to September 30, 2016 (FY 2016) for this fiscal desk monitoring review.

### SUMMARY OF FINDINGS

- Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present as required by Article 26.05(c) of the Texas Code of Criminal Procedures.
- Some attorney payments do not appear to be made in accordance with the published fee schedule as required by Article 26.05(b) of Texas Code of Criminal Procedures.

### OBJECTIVE

The objectives of this review were to

- Determine the accuracy of the Indigent Defense Expenditure Report (IDER);
- 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 grant during FY 2016. Records provided by the Young 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 requested information from the County Auditor. The fiscal monitor reviewed

- Random samples of paid attorney vouchers;
- General ledger transactions;
- IDER;
- Attorney fee schedule;
- Attorney appointment list;
- Attorney applications;
- Attorney criminal and juvenile continuing legal education documentation;
- Any applicable contracts; and
- The county's indigent defense plan filed with TIDC.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Young County was established in 1856 from Bosque and Fannin counties and organized later that year. However, because many citizens abandoned the area during the Civil War, the county was dissolved in 1865. The county was reorganized in 1874. Young County is in north Texas and is named after William Cocke Young, an early Texas settler and soldier. The county seat is Graham. Young County serves an estimated population of 18,834 and occupies an area of 931 square miles, of which 16 square miles is water. The neighboring counties are Archer, Jack, Palo Pinto, Stephens and Throckmorton. The county is served by the 90<sup>th</sup> District Court and the 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, 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 United States 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 indigent defense online grant application to assist in the provision of indigent defense services. Young County met the formula grant eligibility requirements and was awarded \$63,886 for FY 2016.

### Discretionary Grant

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

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present as required by Article 26.05(c).

Forty-one attorney fee vouchers were reviewed and tested for necessary attributes. Texas Code of Criminal Procedures (CCP) Article 26.05(c) reads in part, “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 41 attorney fee vouchers reviewed, the judges approved an amount different from the amount requested on 12 vouchers. Five of 12 vouchers had a written explanation for the variance; however, seven did not. These seven attorney fee vouchers were not in compliance with CCP 26.05(c).

Additionally, the judges provided the amount to be paid on ten vouchers as no requested amount was provided by the attorney.

### **Recommendation:**

The judges should provide written explanation for any variance in the amount approved and the amount requested by the attorney.

As a best practice, attorneys should provide a requested amount to be paid based on the published fee schedule.

### **County Response:**

*We acknowledge these findings and shall correct inconsistencies and recommendations as stated. We shall begin immediately to give reasons for variances and otherwise strictly follow our fee schedule as filed with the TIDC.*

*See Finding 2 for Corrective Action Plan*

### **Finding Two**

Some attorney payments do not appear to be made in accordance with the published fee schedule as required by CCP Article 26.05(b). Additionally, the FY 2016 IDER was not prepared in the form and manner prescribed by the Commission as required under Section §79.036(e) of the Texas Government Code.

The CCP Article 26.05(b) states, “All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county...”

Per the fee schedule, misdemeanor cases are approved to be paid \$300 if paid on a flat-rate basis, and juvenile cases are paid a flat rate of \$400. Hourly rates approved range from \$60-\$100. If the attorney is handling more than one case for a defendant, Judge Bullock indicated that an additional \$100 will be paid for each additional case. This additional case amount is not listed on the fee schedule. The three juvenile cases and 11 of the 20 misdemeanor cases reviewed were paid based on the above flat rate amounts, while five vouchers were paid on an hourly rate within the approved range. However, it was unclear if the remaining four vouchers were paid based on the fee schedule. Of these four vouchers, one voucher was paid a flat rate of \$400 for one case, one voucher was paid a flat rate of \$150, and one was paid a flat rate of \$100. Regarding the final voucher, the attorney requested \$300.00 for a flat rate on a misdemeanor and \$100.05 for mileage, for a total of \$400.05. The judge approved \$400.00; however, the payment to the attorney was \$350. Therefore, the actual payment amount was less than the amount approved by the judge. Additionally, because a portion of the payment was for a reimbursement of attorney expenses, the reimbursement portion should have been reported as "Other Litigation Expenses" on the IDER and not included in the expenditures reported for attorney fees.

For the felony cases heard in the district court, flat rate amounts are \$350 or \$375, depending on level of felony. The hourly rates of \$60 to \$100 remain the same. It is unclear if an additional flat-rate fee is paid for felony cases when an attorney is handling multiple causes for the same defendant or if each case is paid separately. Eighteen vouchers from district court were reviewed. Six vouchers were paid a flat rate of \$350.00 each, and each voucher listed one case in conformity with the fee schedule. Seven vouchers were paid based on hourly rates within the approved range. However, four of these vouchers requested reimbursement for either an investigator, an expert witness, or other expenses. The IDER did not list the cost of these expenditures in the appropriate categories. These expenditures were all listed as attorney fees.

The remaining five vouchers do not appear to be made based on the fee schedule.

- One voucher was paid a flat rate of \$300.00 with no written explanation.
- One voucher was paid \$300 with the description as case dismissed due to defendant's death.
- One voucher was paid a flat rate of \$450 for handling one case
- One voucher listed two cases and was paid \$200 with a description as rate for dismissal.
- One voucher was paid \$550.00 for two cases. For this voucher, in one case the attorney requested a flat rate of \$350 and for the second case requested \$200.00, as it was dismissed.

The fee schedule does not list a dismissal fee rate.

### **Recommendation:**

The payment amounts approved and authorized for the fee vouchers under review were not supported by the current published fee schedule. The judges should review current payment practices and, if necessary, take formal action to adopt a new fee schedule that outlines its current payment practices in accordance with the requirements of CCP Article 26.05(b).

Procedures should be implemented to make sure the approved payment is the amount paid to the attorney.

A separate general ledger account should be set up for fees paid to attorneys that are for one of the other three categories listed on the IDER. Procedures should be implemented that identify these categories, so they can be recorded separately from the attorney fees.

**County Response:**

*We acknowledge the inconsistencies with published fee schedules as required by CCP 26.05(b) and the FY2016 IDER.*

*Young County's Courts acknowledge these findings and shall correct inconsistencies in the Courts Plan and Fee Schedule and shall immediately begin providing for variances from requested amounts provided on court appointed attorneys voucher requests.*

**Young County Action Plan for both Findings**

- 1. A thorough review of 26.05 CCP and Young County's Courts Plan and Fee Schedule on file with TIDC.*
- 2. Make any corrections, modifications, additions, deletions, including any rewrites and adoptions necessary to find compliance.*
- 3. Counsel with financial department regarding IDER and separation of fees and reimbursements.*
- 4. We shall instruct court appointed attorneys of the requirement to submit amounts to be paid or reimbursed in the proper categories as listed on the Attorney Fee Voucher.*
- 5. Implementation of such corrective actions shall commence not later than December 1, 2018. Some of the recommendations regarding variances and inconsistencies and following the fee schedule on file have begun immediately.*

**Contact person(s): County Judge John C. Bullock**

**Completion date: December 1, 2018**

# APPENDICES



## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>YOUNG COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Population Estimate	19,137	19,134	18,834
Juvenile Assigned Counsel	\$10,250	\$6,700	\$7,450
Capital Murder	\$57,932	\$523,537	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$83,848	\$137,312	\$99,239
Adult Misdemeanor Assigned Counsel	\$83,495	\$64,464	\$83,325
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$3,400	\$3,006	\$47,242
Adult Misdemeanor Appeals	\$960	\$0.00	\$0.00
Licensed Investigation	\$8,248	\$35,961	\$0.00
Expert Witness	\$29,345	\$206,097	\$0.00
Other Direct Litigation	\$1,395	\$30,788	\$0.00
Total Court Expenditures	\$278,873	\$1,007,865	\$237,256
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$3,805	\$5,074	\$5,597.
Total Public Defender Expenditures	\$0.00	\$0.00	\$0.00
Total Court and Administrative Expenditures	\$282,678	\$1,012,939	\$242,853
Formula Grant Disbursement	\$43,932	\$27,911	\$63,886
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$21,429	\$26,801	\$23,290
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	596	432	536

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Young County</b>				
<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Texas 2016</b>
Population (Non-Census years are estimates)	19,137	19,134	18,834	27,725,192
Felony Charges Added (from OCA report)	379	208	197	276,879
Felony Cases Paid	198	231	187	200,580
% Felony Charges Defended with Appointed Counsel	52%	111%	95%	72%
Felony Trial Court-Attorney Fees	\$141,780	\$660,849	\$99,239	\$115,192,600
Total Felony Court Expenditures	\$174,837	\$933,295	\$99,239	\$131,727,198
Misdemeanor Charges Added (from OCA report)	584	402	593	481,253
Misdemeanor Cases Paid	367	184	325	214,674
% Misdemeanor Charges Defended with Appointed Counsel	63%	46%	55%	45%
Misdemeanor Trial Court Attorney Fees	\$83,495	\$64,464	\$83,325	\$40,245,051
Total Misdemeanor Court Expenditures	\$89,426	\$67,764	\$83,325	\$41,003,480
Juvenile Charges Added (from OCA report)	19	26	16	27,307
Juvenile Cases Paid	27	15	20	41,989
Juvenile Attorney Fees	\$10,250	\$6,700	\$7,450	\$11,119,664
Total Juvenile Expenditures	\$10,250	\$6,800	\$7,450	\$11,424,425
Total Attorney Fees	\$239,885	\$735,019	\$237,256	\$172,232,454
Total ID Expenditures	\$282,678	\$1,012,939	\$242,853	\$247,730,647
Increase in Total Expenditures over Baseline	237%	1,109%	190%	179%
Total ID Expenditures per Population	\$14.77	\$52.94	\$12.89	\$8.94
Commission Formula Grant Disbursement	\$43,932	\$27,911	\$63,886	\$25,056,873
Cost Recouped from Defendants	\$21,429	\$26,801	\$23,290	\$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 John Charles Bullock  
Constitutional County Judge  
Young County  
516 Fourth Street, Room 108  
Graham, TX 76450

Honorable Stephen E. Bristow  
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