



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Zavala County, Texas**

**FY 2016 Indigent Defense Expenses**

**Final Report**

**April 3, 2018**

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## EXECUTIVE SUMMARY

Zavala County's on-site fiscal monitoring visit was conducted on July 17 and 20, 2017. 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, 2015 to September 30, 2016 (FY2016) was reviewed during the fiscal monitoring visit.

### SUMMARY OF FINDINGS

- Civil case expenditures were included on the Indigent Defense Expense Report (IDER).
- 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.
- Approval for payment of a voucher and written explanations from judges for variance in amounts approved and amounts requested on attorney fee vouchers were not present on vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedures.

### 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 policies and procedures relating to indigent defense payments;
- 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 FY2016. Records provided by the Zavala County Auditor's Office were reviewed. Compliance with other statutory indigent defense program requirements was not included in this review.

### METHODOLOGY

To accomplish the objectives, the fiscal monitor met with the County Auditor and an Assistant County Auditor. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- general ledger transactions provided by the Zavala County Auditor's Office;
- IDER;
- attorney fee schedule;
- any applicable contracts; and
- the county's local indigent defense plan.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Zavala County was created in 1858 and organized in 1884. The county is named for Lorenzo de Zavala, a Mexican politician, signer of the Texas Declaration of Independence and the first vice president of the Republic of Texas. The county seat is Crystal City. Zavala County serves an estimated population of 12,304 and occupies an area of 1,302 square miles, of which 4.3 square miles is water. Zavala County is in Southwest Texas. The neighboring counties are Dimmit, Frio, LaSalle, Maverick and Uvalde.

### 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 2016 indigent defense on-line grant application to assist in the provision of indigent defense services. Zavala County met the formula grant eligibility requirements and was awarded \$12,204 for FY 2016.

### Discretionary Grant

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

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

The FY2016 Indigent Defense Expense Report (IDER) submitted by Zavala County under Texas Government Code Section 79.036(e) included the cost of attorney fees related to civil cases with the criminal indigent defense attorney fees paid. Expenses associated with civil cases are ineligible and may not be included in the IDER.

One voucher of the thirty-two reviewed was for attorney fee related to a civil case, however it was miscoded to identify it as a criminal case.

The IDER overstated the county's criminal indigent defense expenditures due to the inclusion of these ineligible costs. This could mean that the FY 2016 formula grant for Zavala 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/48321/fy16-ider-manual.pdf>.

### **Recommendation:**

Appropriate county personnel should be trained to identify the various types of cases to prepare the IDER properly.

If possible, utilize separate general ledger codes for civil cases and criminal cases.

### **County Response:**

#### **Zavala County Action Plan**

*The County Auditor's office now verifies that cases are criminal cases before they are paid in order to distinguish the criminal from the civil cases. Also, a separate code has been assigned for cases other than criminal.*

**Contact person(s):** *Carlos A. Pereda, County Auditor*

**Completion date:** *October 6, 2017*

### **Finding Two**

Under Section 79.036(e) of the Texas Government Code, the county auditor or designated person shall prepare and send to the Commission in the form and manner prescribed by the Commission an analysis of the amount expended by the county:

- (1) in each district, county, statutory county, and appellate court;
- (2) in cases for which a private attorney is appointed for an indigent defendant;
- (3) in cases for which a public defender is appointed for an indigent defendant;

- (4) in cases for which counsel is appointed for an indigent juvenile under Section [51.10\(f\)](#), Family Code; and
- (5) for investigation expenses, expert witness expenses, or other litigation expenses.

Zavala County prepared and submitted the FY 2016 IDER in accordance with Texas Government Code Section §79.036(e). However, errors were found in the reporting. Thirty-two (32) attorney fee vouchers were reviewed during the review process.

Of the thirty-two attorney fee vouchers reviewed, seven vouchers listed multiple cases disposed. However, it appears that each attorney's voucher payment is recorded as a single case, therefore, underreporting the number of cases disposed.

When attorneys submit their fee vouchers, in addition to the attorney fees, some attorneys request reimbursement for other expenditures such as mileage, etc. These reimbursements are paid to the attorney; however, they are in addition to the cost of the attorney fees and should be classified as other litigation costs. The review revealed that these reimbursements are included as attorney fees on the IDER, which overstates attorney fees and understates other litigation expense.

**Recommendation:**

The vouchers submitted by the attorney should list all the cases disposed. The county should implement a procedure to identify the number of cases per voucher on an ongoing basis. One example could be to list the number of cases in the description area of the general ledger.

If possible, it is suggested that the county include a separate code for attorney expense reimbursements within the general ledger so that reimbursements can be recorded separately and not included as attorney fees.

**County Response:**

**Zavala County Action Plan**

*Payments for attorney's fees for each case are now entered separately, and individual payment is made for each case. Reimbursement for costs other than attorney's fees are separated from the payments for attorney's fees.*

**Contact person(s):** *Carlos A. Pereda, County Auditor*

**Completion date:** *October 6, 2017*

### **Finding Three**

The Texas Code of Criminal Procedures (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 until the judge or director, as applicable, approves the payment. 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...”.

One voucher of the thirty-two-reviewed had an amount requested that the judge changed, however no written explanation for the variance was provided. Another voucher was paid without the attorney’s or judge’s signature.

Without the signature of the judge and without the explanation for the variance the payments for these two vouchers were not made in compliance with the statute.

### **Recommendation:**

The County should develop a process to confirm that the judge has approved all vouchers and has included an explanation for any variance to the attorney’s requested fee.

### **County Response:**

#### **Zavala County Action Plan**

*The County Auditor's Office will now be reviewing all vouchers before payment to verify that the voucher has been approved by the appropriate judge, and that the judge has explained any variance between the amount on the voucher and the amount approved by the judge.*

**Contact person(s):** *Carlos A. Pereda, County Auditor*

**Completion date:** *October 6, 2017*

# APPENDICES



## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>ZAVALA COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Population Estimate	12,176	12,161	12,304
Juvenile Assigned Counsel	\$1,250	\$1,306	\$1,000
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$17,474	\$26,421	\$24,599
Adult Misdemeanor Assigned Counsel	\$850	\$3,228	\$625
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$0	\$0	\$0
Other Direct Litigation	\$0	\$0	\$0
Total Court Expenditures	\$19,574	\$30,955	\$26,224
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$6,131	\$9,196	\$2,033
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$25,705	\$40,151	\$28,257
Formula Grant Disbursement	\$16,007	\$11,566	\$12,204
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$83,527	\$3,530	\$5,493
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Assigned Counsel Cases	42	62	51

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Zavala County</b>				
<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Texas 2016</b>
Population (Non-Census years are estimates)	12,176	12,161	12,304	27,725,192
Felony Charges Added (from OCA report)	77	64	84	276,879
Felony Cases Paid	36	49	47	200,580
% Felony Charges Defended with Appointed Counsel	47%	77%	56%	72%
Felony Trial Court-Attorney Fees	\$17,474	\$26,421	\$24,599	\$115,192,600
Total Felony Court Expenditures	\$17,474	\$26,241	\$24,599	\$131,727,198
Misdemeanor Charges Added (from OCA report)	94	145	130	481,253
Misdemeanor Cases Paid	3	11	2	214,674
% Misdemeanor Charges Defended with Appointed Counsel	3%	8%	2%	45%
Misdemeanor Trial Court Attorney Fees	\$850	\$3,228	\$625	\$40,245,051
Total Misdemeanor Court Expenditures	\$850	\$3,228	\$625	\$41,003,480
Juvenile Charges Added (from OCA report)	1	2	3	27,307
Juvenile Cases Paid	3	2	2	41,989
Juvenile Attorney Fees	\$1,250	\$1,306	\$1,000	\$11,119,664
Total Juvenile Expenditures	\$1,250	\$1,306	\$1,000	\$11,424,425
Total Attorney Fees	\$19,574	\$30,955	\$26,224	\$172,232,454
Total ID Expenditures	\$25,705	\$40,151	\$28,257	\$247,730,647
Increase in Total Expenditures over Baseline	227%	411%	260%	179%
Total ID Expenditures per Population	\$2.11	\$3.30	\$2.30	\$8.94
Commission Formula Grant Disbursement	\$16,007	\$11,566	\$12,204	\$25,056,873
Cost Recouped from Defendants	\$83,527	\$3,530	\$5,493	\$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 Joe Luna  
Constitutional County Judge  
Zavala County  
200 E. Uvalde Street, Suite 9  
Crystal City, TX 78839

Honorable Amado Abascal, III  
Local Administrative District Court  
500 Quarry Street, Box 6  
Eagle Pass, TX 78852

Honorable Cynthia L. Muniz  
Chairman of the Juvenile Board  
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