



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Upton County, Texas

FY 2017 & FY 2018 Indigent Defense Expenses

Final Report

July 19, 2019

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal desk monitoring review of Upton County. The review began on January 3, 2019 and follow-up email exchanges continued thru February 14, 2019 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 TIDC grants.

TIDC reviewed both the expenditure period of October 1, 2016 through September 30, 2017 (FY 2017) and October 1, 2017 through September 30, 2018 (FY2018).

SUMMARY OF FINDINGS

- The FY 2017 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided.
- 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 Procedure (CCP).
- Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present on vouchers as required by CCP Article 26.05(c).

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

TIDC reviewed the County's indigent defense expenditures to ensure compliance with applicable laws, regulations, and the provisions of the grants for FY2017 and FY2018. The records reviewed were provided by the Upton County auditor's office. Compliance with other statutory indigent defense program requirements was not included in this review.

METHODOLOGY

To accomplish the objectives, the fiscal monitor requested information from the County Auditor. The fiscal monitor reviewed

- Random samples of paid attorney fee vouchers;
- General ledger transactions provided by the Upton County auditor's office;
- IDER;
- Attorney fee schedule;
- Attorney appointment list; and
- The County's indigent defense plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Upton County was created in 1887 and later organized in 1910. The County is named after two brothers, John C. and William F. Upton, both colonels in the Confederate Army. The County seat is Rankin. Upton County serves an estimated population of 3,640 and occupies an area of 1,242 square miles, of which .2 square miles is water. The neighboring counties are Crane, Crockett, Ector, Midland, and Reagan Counties.

Upton County is served by the 112th District Court and a 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 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 FY2017 and FY2018 indigent defense online grant application to assist in the provision of indigent defense services. Upton County met the formula grant eligibility requirements and was awarded \$11,722 for FY2017 and \$20,026 for FY2018.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

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 for indigent defense in each court and in each case in which appointed counsel is paid. Upton County prepared and submitted both the FY 2017 and FY 2018 IDER in accordance with Texas Government Code Section §79.036(e); however, the reported amounts were not supported by the financial data provided.

Specifically, Upton County included the cost of an interpreter on a divorce case (civil matter) as an attorney fee on the IDER for FY 2017. (In addition to this matter being civil rather than criminal, court interpreters are general court expenses and not indigent defense-specific costs.) For FY 2018, the auditor failed to include the attorney fees on three vouchers for felony criminal cases. This oversight of \$4,684 understated the County's criminal indigent defense expenditures for attorney fees on the IDER. Additionally, reimbursement to attorneys for out of pocket expenditures are being categorized as attorney fees instead of other litigation expenses.

Furthermore, for FY 2017, the amount reported as payments to the Regional Public Defender Office for Capital Cases (RPDO) for trust fund deposits (expert expenses) was not supported. A review of all expenditures reported for this one pending capital case with the RPDO indicates that \$24,135.33 was over-reported.

Because the amounts reported on the IDER are part of the basis for formula grant awards, the FY 2017 formula grant for Upton County could have been greater than should have been authorized, while the amount for FY 2018 was less than would have been authorized. Please refer to the Indigent Defense Expenditure Report Procedure Manuals: <http://www.tidc.texas.gov/media/57810/fy17-ider-manual.pdf> and <http://www.tidc.texas.gov/media/58006/fy18-ider-manual.pdf>.

Recommendations:

The County should create a new general ledger account to separate criminal case expenses and civil case expenses for the district court. Then, for IDER preparation, the County would only need to work with the general ledger accounts containing criminal case expenses. The County must also develop procedures to ensure that expenses in a case that continues across fiscal years does not count the same expense in more than one fiscal year.

Upton County Action Plan

I will create a new General Ledger Account to separate criminal and civil cases for the District Court. Upton County operates on a calendar year budget, so I will also create a spreadsheet to enter the cases in accordance with the fiscal year of TIDC. I think a spreadsheet will be helpful and would have assisted in eliminating my error in over-reporting of our 5-year Capital Murder Case as well as failing to report a case that might not be seen in current file or current GL.

I am aware now that Civil Cases are not allowed.

Contact person(s): *Christy Hodges*

Completion date: *May 23, 2019*

Finding Two

Two of the 21 attorney fee vouchers reviewed for FY2017 and three attorney fee vouchers of the 22 reviewed for FY2018 did not appear to be paid in accordance with the published fee schedule as required by CCP Article 26.05(b).

The published fee schedule indicates \$80 an hour for misdemeanor cases. On three misdemeanor attorney fee vouchers, no hours were listed but a flat fee amount of \$350 was requested and approved. The juvenile fee schedule indicates that \$300 can be requested as a flat fee; however, two juvenile case vouchers listed a flat fee of \$350, which was approved. If the practice of the court is to pay a flat rate of \$350 on misdemeanors and juvenile cases, it should be listed on the appropriate fee schedule and made public.

Recommendation:

Judges should review the fee schedules and take formal action, if necessary, to adopt a new fee schedule that is consistent with current payment practices in accordance with the requirements of CCP Article 26.05(b).

Upton County Action Plan

I have instructed attorneys on the County Court side to adhere to the plan that was submitted to IDC. In the future, if the fee will be changed, I will submit the proper paperwork.

Contact person(s): *Dusty W. Kilgore, County Judge*

Completion date: *May 23, 2019*

Finding Three

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

The 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.”

One attorney fee voucher of the 43 reviewed was paid an amount other than the amount requested. The voucher in question had listed enough hours to request \$980; however, the attorney requested only \$900. The judge authorized and approved \$600. No explanation for the variance was provided.

Recommendation:

Judges must provide written explanation for any variance in the amount approved and the amount requested by the attorney to comply with CCP 26.05(c).

Upton County Action Plan

If I vary from what the attorney has requested, I give an explanation.

Contact person(s): *Dusty W. Kilgore, County Judge*

Completion date: *May 23, 2019*

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

UPTON COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2016	2017	2018
Population Estimate	3,487	3,640	3,640
Juvenile Assigned Counsel	\$760	\$1,050	\$1,473
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$22,403	\$26,989	\$15,956
Adult Misdemeanor Assigned Counsel	\$6,427	\$8,148	\$6,322
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$3,840	\$2,840
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$46,684	\$286,914	\$73,000
Other Direct Litigation	\$0	\$0	\$0
Total Court Expenditures	\$76,274	\$326,942	\$99,591
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$1,768	\$1,768	\$2,722
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$78,041	\$328,709	\$102,313
Formula Grant Disbursement	\$8,649	\$11,722	\$20,026
Reimbursement of Attorney Fees	\$3,040	\$1,216	\$1,157
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	1	1	1
Total Assigned Counsel Cases	41	38	47

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Upton County				
Year	2016	2017	2018	Texas 2018
Population (Non-Census years are estimates)	3,487	3,640	3,640	28,059,337
Felony Charges Added (from OCA report)	76	37	23	288,260
Felony Cases Paid	28	25	27	215,240
% Felony Charges Defended with Appointed Counsel	37%	68%	117%	75%
Felony Trial Court-Attorney Fees	\$22,403	\$26,989	\$15,956	\$127,990,245
Total Felony Court Expenditures	\$69,087	\$313,904	\$88,956	\$144,671,726
Misdemeanor Charges Added (from OCA report)	87	56	34	467,851
Misdemeanor Cases Paid	12	10	17	214,494
% Misdemeanor Charges Defended with Appointed Counsel	14%	18%	50%	46%
Misdemeanor Trial Court Attorney Fees	\$6,427	\$8,148	\$6,322	\$43,911,167
Total Misdemeanor Court Expenditures	\$6,427	\$8,148	\$6,322	\$44,786,546
Juvenile Charges Added (from OCA report)	0	1	1	28,970
Juvenile Cases Paid	2	3	3	41,578
Juvenile Attorney Fees	\$760	\$1,050	\$1,473	\$11,805,587
Total Juvenile Expenditures	\$760	\$1,050	\$1,473	\$12,312,690
Total Attorney Fees	\$29,589	\$40,027	\$26,591	\$189,152,540
Total ID Expenditures	\$78,041	\$328,709	\$102,313	\$276,229,545
Increase in Total Expenditures over Baseline	416%	2,075%	577%	211%
Total ID Expenditures per Population	\$22.38	\$90.30	\$28.11	\$9.84
Commission Formula Grant Disbursement	\$8,649	\$11,722	\$20,026	\$23,320,001
Cost Recouped from Defendants	\$3,040	\$1,216	\$1,157	\$10,281,678

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
- FY2017 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/57810/fy17-ider-manual.pdf>
- <http://www.tidc.texas.gov/media/58006/fy18-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

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