



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Taylor County, Texas

FY2020 Indigent Defense Expenses

Final Report

August 16, 2022

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of Taylor County beginning on May 12, 2021. Email exchanges continued until October 15, 2021. 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 the expenditure period of October 1, 2019, through September 30, 2020 (FY2020).

SUMMARY OF FINDINGS

- Attorney fee vouchers did not comply with Texas Code of Criminal Procedure Article 26.05(c)'s itemization requirement.
- 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.
- The FY2020 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not prepared in the manner required nor was it supported by financial data provided.

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 FY2020. The records reviewed were provided by the Taylor 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 coordinated emails with the county auditor. The fiscal monitor reviewed

- Random samples of paid attorney fees;
- General ledger transactions provided by the Taylor County auditor's office;
- IDER;
- Attorney fee schedule;
- Any applicable contracts; and
- The County's local indigent defense plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Taylor County was created in 1858 from areas of Travis and Bexar counties; however, it was not organized until 1878. The County is named after three brothers who died defending the Alamo: Edward, James, and George Taylor.

Taylor County is located in West Texas. The current population is estimated at 139,083, and the county seat is Abilene. Taylor County occupies an area of 919 square miles, of which 3.8 square miles is water. The County is bordered by Callahan, Coleman, Fisher, Jones, Nolan, Shackelford, and Runnels Counties.

Taylor County is served by four district courts and two county courts-at-law.

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 (TIDC), effective September 1, 2011. TIDC is a permanent standing committee of the Texas Judicial Council and is administratively attached to the Office of Court Administration (OCA).

TIDC's mission is to protect the right to counsel and improve indigent defense.

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 FY2020 indigent defense online grant application to assist in the provision of indigent defense services. Taylor County met the formula grant eligibility requirements and was awarded \$134,295 in formula grant award.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Twenty-four of the forty-nine attorney fee vouchers reviewed did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05(c), because the vouchers did not appear to be itemized vouchers submitted to the judges. 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 or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, 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”

The payment records for the county courts-at-law appear to be a standardized letter form addressed “To the Honorable County Judge and Commissioner Court of Taylor County, Texas” and signed by the judge. The juvenile payment records are titled “Order to Pay Court Appointed Attorney” and are also signed by the judge. These payment records appear to be court orders prepared by the judge authorizing a payment. The district court vouchers have both an order to pay from the judge and a “Report of Court Appointed Attorney’s Services” submitted by the attorney. The judge’s order to pay an attorney, standing on its own, is not sufficient to satisfy the requirement that the form for itemizing the services performed be submitted to the judge. Therefore, Taylor County is not in compliance with Article 26.05(c).

Recommendation:

Attorneys performing duties for the county courts-at-law and the juvenile courts should complete a form that itemizes the services performed and indicates the amount billed and submit that form to the judges for approval.

Taylor County Response to Finding One:

Prior to TIDC's findings, it had long been the practice of the Taylor County misdemeanor courts to submit only an order to pay the court-appointed attorney at the conclusion of the case. In practice, the attorney would write down the information for each case for which he was requesting payment on the order form, and then hand it to the judge for approval and signature. This resulted in the one document (the order).

In contrast, the district courts have, for as long as anyone can remember, required the attorney to submit a separate invoice. The district court judge then reviews the invoice and issues an order for the appropriate fee. This process results in two documents (the invoice and the order).

As of May 2022, the misdemeanor courts have adopted the same practice as the district courts, requiring a separate attorney invoice before issuing an order for payment. We believe that this change in practice addresses the problem and brings Taylor County into compliance.

Contact person(s): *Jeff Propst, Local Administrative Judge*

Completion date: *August 5, 2022*

Finding Two

Four of 49 attorney fee vouchers reviewed did not appear to be paid in accordance with the published fee schedule as required by CCP Article 26.05(b). The payment records appear to have the payment amount recorded by the judge. Attorneys appear to submit a voucher for the district court cases. Although the attorneys itemize the service provided and list the amount of time spent on the case, these vouchers do not routinely request a specific amount on their submitted vouchers. It appears that the judges are authorizing the amount to be paid, but some amounts authorized do not correspond with the published fee schedule:

- One pay record listed two cases, but the amount approved was for one case.
- One pay record listed five cases at the state jail felony (SJF) level. Based on the fee schedule, the pay should have been \$450 for the first case plus \$150 for each subsequent case, for a total of \$1050. For this voucher, however, \$850 was approved.
- One pay record listed a SJF case and was paid \$750 instead of the \$450 listed on the fee schedule.
- The level of felony was not indicated on one pay record, but the amount paid of \$385 was below the lowest flat rate level for any level of felony case.

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). Approved payments should be consistent with the adopted fee schedule.

Taylor County Response to Finding Two:

The local administrative judge has discussed this issue with each of the other judges. Each judge has reviewed the fee schedule and agrees to pay attorneys in accordance with the fee schedule. It is possible that some of the errors were due to oversight. Additionally, the judges have made a small revision to the fee schedule to account for common situations where the fee schedule seemed inappropriate.

Contact person(s): *Jeff Propst, Local Administrative Judge*

Completion date: *August 5, 2022*

Finding Three

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 are paid. Taylor County prepared and submitted the FY2020 Indigent Defense Expenditure Report (IDER). However, the report was not prepared in the manner required, and an error was noted based on the financial data provided.

Specifically, attorneys requested a reimbursement of an expenditure on five of the district court attorney vouchers reviewed. This reimbursement is in addition to the attorney fee and should be categorized as “Other Litigation Expenditures” on the IDER. For these five vouchers, the reimbursements were categorized as attorney fees.

Additionally, the amount recorded for investigation cost was not supported by the financial data provided. For the 42nd District Court, the IDER reported \$14,228.20; however, the general ledger information supported the amount of \$3,714.20.

Because the amounts reported on the IDER are part of the basis for Formula Grant awards, the FY2021 formula grant for Taylor County was likely greater than would have been authorized.

Recommendation:

Taylor County must develop procedures both to distinguish attorney fees from reimbursements for other eligible expense categories and to ensure that the IDER is prepared accurately.

Taylor County Response to Finding Three:

Taylor County has adopted additional procedures to address discrepancies in how expenditures are captured and reported. We have added new general ledger accounts to each court to separate the attorney fee and other litigation costs in our financial system. This distinction will streamline reporting categories when our annual report is prepared. The over-reporting of investigator costs was an oversight in total cost breakout. Taylor County will update the schedule used to report investigator cost (by court) with additional check figures. A level of review by a separate employee will also be added to the report preparation.

Contact person(s): *Jeff Propst, Local Administrative Judge*

Completion date: *August 5, 2022*

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

TAYLOR COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2018	2019	2020
Population Estimate	139,470	138,849	139,083
Juvenile Assigned Counsel	\$37,768	\$46,089	\$30,515
Capital Murder	\$59,980	\$33,838	\$0
Adult Non-Capital Felony Assigned Counsel	\$1,133,728	\$1,287,155	\$1,243,701
Adult Misdemeanor Assigned Counsel	\$254,443	\$265,124	\$289,010
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$65,582	\$82,391	\$67,010
Adult Misdemeanor Appeals	\$0	\$0	\$2,390
Licensed Investigation	\$23,612	\$14,803	\$37,351
Expert Witness	\$22,252	\$1,800	\$3,750
Other Direct Litigation	\$18,662	\$50,961	\$45,085
Total Court Expenditures	\$1,615,926	\$1,782,161	\$1,718,811
Administrative Expenditures	\$61,795	\$64,209	\$67,788
Funds Paid by Participating County to Regional Program	\$54,480	\$54,480	\$43,766
Total Public Defender Expenditures	NA	NA	NA
Total Court and Administrative Expenditures	\$1,732,202	\$1,900,850	\$1,830,365
Formula Grant Disbursement	\$123,287	\$123,867	\$134,295
Reimbursement of Attorney Fees	\$275,343	\$290,345	\$287,108
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	NA	NA	NA
Total Assigned Counsel Cases	4,142	4,301	3,662

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Taylor County				
Year	2018	2019	2020	Texas 2020
Population (Non-Census years are estimates)	139,470	138,849	139,083	29,149,480
Felony Charges Disposed (from OCA report)	1,796	2,188	2,031	207,142
Felony Cases Paid	1,805	2,007	1,819	183,123
% Felony Charges Defended with Appointed Counsel	101%	93%	90%	88%
Felony Trial Court-Attorney Fees	\$1,193,809	\$1,320,993	\$1,243,701	\$122,376,695
Total Felony Court Expenditures	\$1,237,973	\$1,335,719	\$1,284,502	\$136,468,400
Misdemeanor Charges Disposed (from OCA report)	2,700	2,893	3,133	304,810
Misdemeanor Cases Paid	1,614	2,082	2,092	149,070
% Misdemeanor Charges Defended with Appointed Counsel	67%	72%	60%	49%
Misdemeanor Trial Court Attorney Fees	\$254,443	\$265,124	\$289,010	\$35,988,801
Total Misdemeanor Court Expenditures	\$255,943	\$267,000	\$289,310	\$36,626,732
Juvenile Charges Added (from OCA report)	107	138	108	18,689
Juvenile Cases Paid	212	183	198	30,149
Juvenile Attorney Fees	\$37,768	\$46,089	\$30,515	\$8,561,322
Total Juvenile Expenditures	\$37,768	\$46,089	\$30,515	\$8,753,040
Total Attorney Fees	\$1,551,401	\$1,714,597	\$1,632,626	\$171,807,987
Total ID Expenditures	\$1,732,202	\$1,900,850	\$1,830,365	\$271,232,154
Increase in Total Expenditures over 2001 Baseline	290%	328%	312%	205%
Total ID Expenditures per Population	\$13.16	\$13.69	\$12.42	\$9.30
Commission Formula Grant Disbursement	\$134,295	\$123,867	\$134,295	\$25,955,677
Cost Recouped from Defendants	\$275,343	\$290,345	\$287,108	\$8,682,864

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
- FY2020 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/8d885e4bec7514c/fy2020-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

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