



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Upshur County, Texas**

**FY2022 Indigent Defense Expenses**

**Final Report**

**June 2024**

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# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Upshur County on April 5, 2023. Email exchanges continued until July 5, 2023. 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, 2021, through September 30, 2022 (FY2022).

## SUMMARY OF FINDINGS

Documentation that attorneys have meet their annual CLE hours are not maintained to verify attorney eligibility to receive appointments.

## 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 payments.
- Provide recommendations pertaining to operational efficiency.
- 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 FY2022. The records reviewed were provided by the Upshur 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 met with staff from the County Auditor's Office. The fiscal monitor reviewed:

- Random samples of paid attorney fee vouchers;
- General ledger transactions provided by the Upshur 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

Upshur County was organized on July 13, 1846, by the first legislature of the state of Texas. The area that is today Upshur County was first part of Nacogdoches County, which was split to form Harrison County. Harrison County was later subdivided to create Upshur County. At the time the County was established, it included all the area that is now Upshur County and Camp County and the part of Gregg County that is north of the Sabine River.

The County was named in honor of Abel Parker Upshur, who served as the Secretary of State under President John Tyler.

Upshur County is located in the Piney Woods in northeast Texas. The current population is estimated at 41,262 and the County seat is Gilmer. Upshur County occupies an area of 593 square miles, of which 9.75 square miles is water. The County straddles the major drainage systems of Texas. The northern portion of the County drains into the Mississippi River via Little and Big Cypress Creeks and the southern portion of the County flows to the Gulf of Mexico via the Sabine River. The County is bordered by Camp, Gregg, Harrison, Marion, Morris, Smith, and Wood Counties.

Upshur County is served by one district court and the Constitutional 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 (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, 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 FY2022 indigent defense online grant application to assist in the provision of indigent defense services. Upshur County met the formula grant eligibility requirements and was awarded a \$34,077 Formula Grant.

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

Title 1, Texas Administrative Code (TAC) §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, Texas Code of Criminal Procedure (CCP) may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides that an attorney is eligible if the attorney is board certified in criminal law or juvenile law.

In addition to TAC §174.1, the Upshur County District Court Indigent Defense Plan states that an average of 10 hours a year in CLE courses related to criminal defendants must be maintained to receive appointments.

The County was not requesting information from the attorneys to verify that they were current on their CLE requirements. Therefore, the County could not provide documentation that attorneys assigned criminal cases had met the CLE requirements to be eligible for appointment. The County may have made ineligible payments to these attorneys. (TAC §174.4 does allow for an emergency appointment when no attorney meeting the CLE requirements is available.)

### **Recommendation:**

The County must implement a procedure to verify annually that attorneys included on the current appointment list have met the current year’s CLE requirements.

### **County Response**

*In regard to Finding One of the Fiscal Monitoring Review of Upshur County for FY 2022 please see below response:*

### **Upshur County Action Plan**

- *The 115<sup>th</sup> District Court issued a letter to all attorneys on the 115<sup>th</sup> District Court felony indigent defense appointment wheel, dated June 27, 2023, regarding "Continued Eligibility for Appointment Wheel" requesting that they execute and return a CLE certification form. A copy of this letter and form is attached.*
- *The Upshur County Court issued a letter dated June 23, 2023, to all attorneys on the list of those qualified to serve as court appointed counsel in misdemeanor cases requesting that they execute and return a CLE Certification form. A copy of this letter is attached.*
- *Additionally, Upshur County will make available the CLE certification form at the 115<sup>th</sup> District Court Judge’s office. Attorneys can submit the executed CLE certification*

*form to the judge's office any time throughout the year but at least by December 31<sup>st</sup> each year.*

**Contact person(s):** *Judge Dean Fowler, the 115<sup>th</sup> District Court Judge*

**Completion date:** *June 3, 2024*

## **Conclusion**

TIDC thanks Upshur County officials and staff for their professionalism and assistance in completing this review. TIDC stands ready to assist Upshur County when any questions and concerns arise in the future.

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>UPSHUR COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Population Estimate	40,998	41,262	41,262
Juvenile Assigned Counsel	\$5,766	\$3,846	\$3,750
Capital Murder	\$0	\$4,513	\$8,782
Adult Non-Capital Felony Assigned Counsel	\$169,253	\$78,398	\$128,735
Adult Misdemeanor Assigned Counsel	\$43,129	\$19,434	\$23,500
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$9,830	\$6,403	\$11,012
Adult Misdemeanor Appeals	\$0	\$4,221	\$0
Licensed Investigation	\$15,312	\$8,830	\$19,421
Expert Witness	\$4,750	\$0	\$1,815
Other Direct Litigation	\$1,579	\$0	\$16,908
Total Court Expenditures	\$249,619	\$125,645	\$213,921
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
Total Public Defender Expenditures	N/A	N/A	N/A
Total Court and Administrative Expenditures	\$249,619	\$125,645	\$213,921
Formula Grant Disbursement	\$29,578	\$39,422	\$32,583
Reimbursement of Attorney Fees	\$35,663.39	\$39,222	\$38,284
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	N/A	N/A	N/A
Total Assigned Counsel Cases	439	256	306

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Upshur County</b>				
<b>Year</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>Texas 2021</b>
Population (Non-Census years are estimates)	40,998	41,262	41,262	29,149,480
Felony Charges Disposed (from OCA report)	393	258	349	233,848
Felony Cases Paid	302	189	231	179,017
% Felony Charges Defended with Appointed Counsel	77%	73%	66%	77%
Felony Trial Court-Attorney Fees	\$169,253	\$82,911	\$137,517	\$117,687,277
Total Felony Court Expenditures	\$189,573	\$91,741	\$169,628	\$129,509,185
Misdemeanor Charges Disposed (from OCA report)	531	376	494	329,309
Misdemeanor Cases Paid	121	53	64	143,702
% Misdemeanor Charges Defended with Appointed Counsel	23%	14%	14%	44%
Misdemeanor Trial Court Attorney Fees	\$43,129	\$19,434	\$23,500	\$36,970,435
Total Misdemeanor Court Expenditures	\$43,129	\$19,434	\$24,500	\$37,596,320
Juvenile Charges Disposed (from OCA report)	0	0	0	15,024
Juvenile Cases Paid	10	9	8	22,404
Juvenile Attorney Fees	\$5,766	\$3,846	\$3,750	\$8,221,663
Total Juvenile Expenditures	\$5,766	\$3,848	\$8,750	\$8,392,554
Total Attorney Fees	\$227,978	\$116,816	\$175,779	\$166,177,254
Total ID Expenditures	\$249,619	\$125,645	\$213,921	\$277,829,412
Increase in Total Expenditures over 2001 Baseline	137%	19%	103%	213%
Total ID Expenditures per Population	\$6.09	\$3.05	\$5.18	\$9.52
Commission Formula Grant Disbursement	\$29,578	\$39,422	\$32,583	\$21,929,443
Cost Recouped from Defendants	\$35,663	\$39,422	\$38,284	\$9,536,138

Source: Texas Indigent Defense Commission records

## APPENDIX B – CRITERIA

### Criteria

- Uniform Grant Management Standards
- Texas Grant Management Standards
- Texas Government Code, Section 79.036, Indigent Defense Information
- Texas Government Code, Section 79.037, Technical Support; Grants
- Code of Criminal Procedure, Art 26.04, Procedures for Appointing Counsel
- Code of Criminal Procedure, 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
- FY2022 Indigent Defense Expenditure Report Manual found at:  
<https://tidc.texas.gov/media/02ad1jlu/fy22-ider-manual-final.pdf>

## APPENDIX C – DISTRIBUTION LIST

The Honorable Todd Tefteller  
Upshur County Judge  
P.O. Box 730  
Gilmer, TX 75644  
[todd.tefteller@countyofupshur.com](mailto:todd.tefteller@countyofupshur.com)

The Honorable Dean Fowler  
Local Administrative District Judge  
115th District Court  
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