



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Cameron County, Texas

FY2020 Indigent Defense Expenses

Final Report

April 25, 2023

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) initiated a fiscal monitoring review of Cameron County beginning on October 14, 2021. Onsite review was conducted from April 11 through April 14, 2022. 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

- General court expenditures were included with the criminal indigent defense expenses in the FY2020 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e).
- 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.
- Cameron County uses a contract defender system for specialty courts; however, the County did not fully comply with the contract defender rules in the Texas Administrative Code (TAC), Chapter 174, Subchapter B.

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 Cameron 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 worked with the county auditor and her staff. The fiscal monitor reviewed

- Random samples of paid attorney fees;
- General ledger transactions provided by the Cameron 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

Cameron County was founded in 1848 after the US-Mexican War ended with the signing of the Treaty of Guadalupe Hidalgo. The County is named after Captain Ewen Cameron, who was an officer in the Republic of Texas army and executed by order of Santa Anna for his participation in the Mier Expedition.

Cameron County is the southernmost county in Texas. The current population is estimated at 426,144, and the county seat is Brownsville. Cameron County occupies an area of 1,276 square miles, of which 386 square miles is water. The County is bordered by Hidalgo and Willacy Counties in the US, the Gulf of Mexico and Matamoros Municipality, Tamaulipas, Mexico.

Cameron County is served by eight district courts and five 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. Cameron County met the formula grant eligibility requirements and was awarded \$204,416 in formula grant award.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Cameron County included some general court expenditures with the criminal indigent defense expenses in the FY2020 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e). TIDC reviewed 12 invoices from the expert witness, investigation, and other direct litigation expense categories. One invoice was related to investigation expense, two were for transcript costs, and the remaining nine were in the expert witness category.

The nine expert witness invoices were related to psychological/mental health evaluations. A mental health evaluation to determine competency to stand trial is typically a general court expense. The mental health examinations that are considered eligible indigent defense expenses are those requested by the defense counsel where the results are shared exclusively with the defense team. No mental health evaluations requested by the judge or prosecuting attorney should be reported as indigent defense expenses. Support that the expense is requested by the defense attorney for exclusive use of the results by the defense team should be documented to include the expenses on the IDER. Evaluations of competency to stand trial are not eligible indigent defense expenditures regardless of the origin of the referral for the competency evaluation.

Of the nine invoices reviewed, one included a motion that the report was requested by the defense attorney for preparation of a defense. The remaining eight invoices, which included billing for multiple defendants, appeared to be addressed directly to the court and no motion identifying the evaluation was prepared exclusively for the preparation of a defense was included with the documentation.

- General court expenditures should not be included in the criminal indigent defense expense report. The IDER overstated the county's criminal indigent defense expenditures due to the inclusion of these general court costs. This could mean that the FY 2021 formula grant for Cameron County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual.

Recommendation:

Procedures to identify and record expenses for psychological evaluations requested by the appointed defense counsel for the exclusive use of defense counsel in preparation of a defense should be developed. These procedures must exclude evaluations of competency to stand trial regardless of the origin of the referral for competency evaluation.

Cameron County Action Plan

Cameron County will implement the following procedures to address Finding One:

- *A standard form will be created for the court staff to identify if psychological evaluation invoiced services were provided for 1) trial strategy purposes exclusive for defense counsel, or 2) to determine if a defendant is competent to stand trial.*
- *A new general ledger “Court Ordered/Non-Defense” account will be created to separately track evaluations of competency to stand trial.*
- *The FY 2023 IDER will include psychological evaluation expenses for defense only.*

Contact Person(s): *Lorena Hernandez, CPA, County Auditor and Priscilla Guajardo, Pre-Trial Services Director*

Completion Date: *New procedures will be communicated to courts on the next June 2023 Board of Judges meeting.*

Finding Two

Three of 64 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 fee schedule provides for either a flat fee amount based on the level of case or various hourly rates based on type of service. Additionally, the attorney may add a fee of \$70 for an initial jail visit. Three vouchers were paid under either the hourly rate or flat fee amount for the disposal of case plus the fee for the initial jail visit. However, these three vouchers paid a higher rate for the jail visit or for multiple jail visits.

- *Two attorney vouchers billed and were approved for \$80 for initial jail visits in addition to the \$150 flat fee for pleas. The fee schedule provides for \$70 for the initial jail visit.*
- *The third attorney voucher requested payment for two jail visits and the flat fee for a plea requesting \$80 for each jail visit and an additional \$150 flat rate for the plea.*

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.

Cameron County Action Plan

Cameron County will implement the following procedures to ensure attorney fee vouchers are paid in accordance with the published fee schedule:

- *The Indigent Defense Pretrial Plan and Attorney Fee Schedule are now posted online in the Cameron County website as of March 6, 2023.*
- *Each individual district judge was emailed the fee schedule on January 24, 2023.*
- *A new software, specifically for indigent court case management, is being sought to enhance the acceptance, review and approval of attorney vouchers.*
- *The Board of Judges in their upcoming June 2023 meeting will be reviewing*

the attorney fee schedule and take formal action, if necessary, to adopt a new fee schedule.

Contact Person(s): *Lorena Hernandez, CPA, County Auditor and Priscilla Guajardo, Pretrial Services Director*

Completion Date: *January 24 and March 6, 2023*

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

Specifically, attorneys requested reimbursement of expenses in addition to their fees on two of the attorney vouchers reviewed. This reimbursement should be categorized as “Other Litigation Expenditures” on the IDER. For these two vouchers, the reimbursements were categorized as attorney fees.

Additionally, 12 of the attorney fee vouchers failed to identify the court number in which the case was disposed; therefore, the support needed to verify the accuracy of the IDER for individual courts was not provided.

Recommendation:

Cameron County must develop procedures to distinguish attorney fees from reimbursements for other eligible expense categories and to ensure that the IDER is prepared accurately. The County should require attorney vouchers to identify the specific court in which the case was disposed to maintain supporting documentation for court-level reporting.

Cameron County Action Plan

Cameron County will implement the following procedures to address Finding Three:

- *Attorneys will be advised to submit ‘Other Litigation Expenditures’ via a separate form for payment and these fees will be coded to a new general ledger account: “Other Litigation Expenditures.”*
- *Each judge has been appraised to complete the ‘Court No. disposition’ in the attorney fee vouchers.*

- *A new indigent case management software is being sought to enhance the processing of attorney vouchers and will assist in identifying the specific court in which the case was disposed.*

Contact Person(s): *Lorena Hernandez, CPA, County Auditor and Priscilla Guajardo, Pretrial Services Director*

Completion Date: *New procedures will be communicated to courts on the next June 2023 Board of Judges meeting.*

Finding Four

Cameron County uses a contract defender system for two specialty courts; however, the County did not fully comply with the contract defender rules in the Texas Administrative Code (TAC), Title 1, Part 8, Chapter 174, Subchapter B.

Section 174.12 reads in part as follows:

The appointing authority shall solicit and select contractors in accordance with the procedures governing alternative appointment programs contained in Article 26.04, Code of Criminal Procedure.

- (1) Notification. The notification of the opportunity to apply (NOA) to be a contractor shall be distributed in a manner that reasonably covers all practicing members of the bar within the county or other region designated by the appointing authority. The notification shall inform attorneys of all requirements for submitting applications.
- (2) Opportunity to Respond. All potential contractors shall have the same opportunity to respond to the NOA and be considered for the award of a contract. All potential contractors shall have at least 30 days from the issuance of the NOA to respond. The appointing authority may provide for less than 30 days to respond if a contract needs to be awarded on an emergency basis. A contract awarded on an emergency basis may not exceed 90 days in duration.

Section 174.25 reads in part as follows:

The contract shall set the amount of compensation to be paid to the contractor and the designated method and timing of payment. The contract shall state that the contractor shall be required to submit an itemized fee voucher. The voucher must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for approval and payment. The contract shall also specify how a contractor is to be compensated for cases assigned but not disposed within the term of the contract as provided in §174.19 of this subchapter.

Additionally, the definition of itemized fee voucher states that the monthly voucher must include, at a minimum, all the information necessary for the county auditor or other designated official to complete the indigent defense expenditure report required to be submitted to TIDC.

For FY2020, Cameron County reported indigent defense expenditures regarding two specialty courts: a veterans' court and diversion court.

Each of the specialty courts has a contract with one attorney. For each specialty court, a contract with the attorney and a certificate of interested parties was provided in support of contract rules. However, the County did not provide documentation that an open notification was made. Therefore, Cameron County was not in compliance with the open notification process for the selection of the contract attorneys.

For each payment, the attorney for the respective court issues an invoice to be paid. For the diversion court, the attorney lists the date of court hearings and his activities for the date. For the veterans' court, the attorney submits a letter stating that he worked for the court for the month. However, neither invoice provides the number of disposed cases, which is required information the auditor needs to prepare the annual IDER. The auditor reports the number of disposed cases based on a number of successful completions for the year recorded in a case management system.

Recommendation:

To comply with TAC 174 Subchapter B the County should have:

- an open notification process for the selection of the attorneys per TAC 174.11; and
- the attorneys should provide the number of disposed cases on the payment request voucher per TAC 174.10 (5).

The contract defender must submit an itemized fee voucher that lists cases disposed in each court to the appointing authority for approval.

Cameron County Action Plan

Cameron County will implement the following procedures to address Finding Four:

- *The formal specialty court contracts with two defense attorneys will be honored until their respective end dates of 08/31/2023 and 09/30/2023. The two defense attorneys will be notified and required to provide Cameron County with the number of disposed cases and respective court to accurately report on the FY23 IDER.*
- *Upon completion of the two respective contract periods, Cameron County will conduct an open notification process for the selection of attorneys per TAC 174.11.*

Contact Person(s): *Lorena Hernandez, CPA, County Auditor and Priscilla Guajardo, Pretrial Services Director*

Completion Date: *New procedures will be communicated to courts on the next June 2023 Board of Judges meeting.*

APPENDICES

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APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

CAMERON COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2018	2019	2020
Population Estimate	426,191	425,849	426,144
Juvenile Assigned Counsel	\$7,150	\$4,310	\$5,330
Capital Murder	\$75,223	\$149,664	\$20,000
Adult Non-Capital Felony Assigned Counsel	\$881,873	\$942,394	\$669,258
Adult Misdemeanor Assigned Counsel	\$868,505	\$925,625	\$525,854
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$9,543	\$44,934	\$23,275
Adult Misdemeanor Appeals	\$0	\$0	\$29,882
Licensed Investigation	\$871	\$14,234	\$1,025
Expert Witness	\$86,310	\$88,920	\$47,850
Other Direct Litigation	\$27,346	\$96,566	\$13,936
Total Court Expenditures	\$1,956,823	\$2,266,646	\$1,335,410
Administrative Expenditures	\$448,393	\$474,135	\$542,800
Total of Limited Scope 15.17/ Automatic Bail Review Hearings	N/A	N/A	\$35,195
Total Public Defender Expenditures	\$160,966	\$151,272	\$145,515
Total Court and Administrative Expenditures	\$2,566,182	\$2,892,052	\$2,023,724
Total Limited Scope cases	N/A	N/A	178
Total Public Defender Cases	695	587	429
Total Assigned Counsel Cases	5,202	5,224	3,326
Reimbursements of Attorney Fees	\$82,843	\$83,623	\$61,251
Formula Grant Disbursement	\$277,396	\$264,171	\$278,099

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Cameron County				
Year	2018	2019	2020	Texas 2020
Population (Non-Census years are estimates)	426,191	425,849	426,144	29,149,480
Felony Charges Disposed (from OCA report)	3,318	2,985	2,366	207,142
Felony Cases Paid	2,075	1,916	1,404	183,123
% Felony Charges Defended with Appointed Counsel	63%	64%	59%	88%
Felony Trial Court-Attorney Fees	\$957,095	\$1,092,058	\$689,258	\$122,376,695
Total Felony Court Expenditures	\$1,044,549	\$1,264,107	\$729,018	\$136,468,400
Misdemeanor Charges Disposed (from OCA report)	6,480	5,074	3,399	304,810
Misdemeanor Cases Paid	3,060	3,209	1,777	149,070
% Misdemeanor Charges Defended with Appointed Counsel	47%	63%	52%	49%
Misdemeanor Trial Court Attorney Fees	\$868,505	\$925,625	\$525,854	\$35,988,801
Total Misdemeanor Court Expenditures	\$874,455	\$932,775	\$530,604	\$36,626,732
Juvenile Charges Added (from OCA report)	614	464	421	18,689
Juvenile Cases Paid	758	679	464	30,149
Juvenile Attorney Fees	\$7,150	\$4,310	\$5,330	\$8,561,322
Total Juvenile Expenditures	\$28,275	\$24,830	\$23,630	\$8,753,040
Total Attorney Fees	\$1,842,294	\$2,066,926	\$1,272,599	\$171,807,987
Total ID Expenditures	\$2,566,182	\$2,892,052	\$2,023,724	\$271,232,154
Increase in Total Expenditures over 2001 Baseline	293%	343%	205%	205%
Total ID Expenditures per Population	\$6.02	\$6.79	\$4.67	\$9.30
Commission Formula Grant Disbursement	\$277,396	\$264,171	\$278,099	\$25,955,677
Cost Recouped from Defendants	\$82,843	\$83,623	\$61,251	\$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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