



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Travis County, Texas

FY2021 Indigent Defense Expenses

Final Report

December 2023

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring review of Travis County. The review was a desk review combined with an on-site review of computer documents. The desk review began on August 3, 2022, with the on-site review conducted on January 18, 2023. Email exchanges and discussions continued until June 9, 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, 2020 to September 30, 2021 (FY2021).

SUMMARY OF FINDINGS

Texas Administrative Code §173.201 states that a “county may not reduce the amount of funds expended for indigent defense services in the county because of funds provided by the Commission.” It appears that the County’s method of calculating the eligible increase in costs of implementing the mandatory hourly billing pilot project in felony cases did not take into consideration the amount the County was already paying for attorney fees on felony A cases. Therefore, an unintentional supplanting issue appears to have occurred with that portion of the TIDC Improvement Grant. Because the grant is still active, the County is performing additional calculations to determine if supplanting occurred and, if so, what amount will need to be adjusted from future grant payments to remedy the ineligible expenditures reported.

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.
- 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 FY2021. The records reviewed were provided by the Travis County auditor’s office. Compliance with other statutory indigent defense program requirements was not included in this review.

METHODOLOGY

The fiscal monitor met with Joseph Kertz, court administrator, Bradley Hargis, director of the Capital Area Private Defender Service (CAPDS), and worked remotely with Amy Smith from the County Auditor’s Office. The fiscal monitor reviewed

- Random samples of paid attorney fee vouchers.
- General ledger transactions provided by the Travis County Auditor’s Office.
- The Indigent Defense Expenditure Report (IDER).
- The attorney fee schedule.
- Any applicable contracts.
- The County’s Indigent Defense Plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Travis County is located in central Texas.

The County has an estimated population of 1,285,526 and is the fifth most populous county in Texas. The County seat is Austin, which is the state capital.

Travis County is served by ten district courts and seven county courts-at-law.

Commission Background

In January 2002, the Texas Legislature established the Task Force on Indigent Defense. In 2011, the Legislature changed the name to the Texas Indigent Defense Commission (TIDC). 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 public defense.

TIDC conducts fiscal monitoring 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 FY2021 indigent defense online grant application to assist in the provision of indigent defense services. Travis County met the formula grant eligibility requirements and was awarded \$863,980 in formula grant funds.

Improvement Grants

Travis County was awarded two Improvement Grants in FY2021. The first Improvement Grant was for the second year of a multi-year grant funding the creation of a new public defender office, enhancements to the CAPDS managed assigned counsel program (MAC), and the transition to mandatory hourly billing for felony cases assigned by CAPDS. TIDC disbursed \$2,153,178 in FY2021 for this multi-purpose grant. The second Improvement Grant was for the third year of a multi-year grant for the limited felony expansion of the Mental Health Public Defender Office. TIDC disbursed \$112,501 for FY2021 for the limited felony expansion of the Mental Health Public Defender grant.

This fiscal monitoring included a review of grant funds distributed under the Formula Grant and the two Improvement Grants.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Travis County's Improvement Grant application for the new public defender office and MAC program enhancements included funds to support a transition to mandatory hourly billing in felony cases coupled with enhanced oversight of representation. The grant application budget requested the *additional* funds needed (i.e., funds over and above the current spending on flat fees) to implement this new policy. TIDC's grant award was premised upon the understanding that the funds provided for this component of the program would defray the costs of the *new* spending required to implement the program. At the request of Travis County, the grant was structured on 50% state reimbursement of eligible costs for the four-year duration of the grant.

Review of Travis County's expenditure records related to the transition to hourly billing in felony cases revealed that the entire amount of attorney fees for felony cases that were deemed eligible under the grant were reported as eligible expenditures under the grant, rather than the amounts in excess of the flat fees that were previously allowed.

TIDC's Improvement Grant Request for Applications indicates that only new programs are eligible and prohibits using grant funds to supplant current county spending. The Texas Administrative Code Rule §173.201 also states that "A county may not reduce the amount of funds expended for indigent defense services in the county because of funds provided by the Commission."

To fulfill the grant objective to phase out flat fee attorney billing in felony cases, Travis County set up a code in the Appointment Management Program (AMP) titled "TIDC Hourly." For the year under review, the attorneys reporting work on "Felony A" panel cases were instructed to use this new code and report the time worked on the case per hour, forgoing any use of the flat fee rate. For each category of work (including Communications, Investigation, Case Work and Court Time), two lines were entered to the general ledger splitting the cost 50/50 for each line. The purpose of the split entries was to break out the amount reimbursable under the grant and the amount the County was funding. However, this method of tracking expenditures resulted in the full amount of hourly attorney fees being reported as eligible grant expenditures, rather than the amounts in excess of what would have been expended under the baseline flat fee system. As a result, the full cost of hourly attorney fees in eligible cases were included in the grant expenditure reports, rather than just the new spending in excess of flat fees. The method of tracking eligible expenditures appears to have resulted in an unintentional supplanting issue in violation of Texas Administrative Code Rule §173.201.

Recommendation:

The County must develop a reasonable methodology to determine the amount the County would have spent on "Felony A" panel cases for the FY2021 year under the original system prior to implementing the mandatory hourly pilot project. The County must report the methodology to TIDC for approval, calculate the corrected amounts for eligible expenditures, and revise the grant

expenditure reports that were not based on the increased costs associated with implementation of the hourly pilot project.

The County must also apply the approved methodology to revise grant expenditure reports for grants provided in subsequent fiscal years that may also have overstated eligible expenditures associated with the hourly rate pilot program. Once all the calculations are approved, TIDC will work with the County to adjust future grant payments to remedy the issue.

County Response

As part of the Indigent Defense Enhancement grant from the Texas Indigent Defense Commission (TIDC) agreed to help fund a pilot program to pay attorneys and hourly rate for defendants based on the highest charge brought against them. As part of this program, TIDC is not allowed to supplant funds that Travis County would have paid to the attorneys if we had continued to pay attorneys at the flat fee rate. Below we suggest a method to calculate that supplanted amount.

Prior to moving to hourly payments, attorneys were paid flat fees based on the number of cases included in the assignment. In addition, they were paid different amounts for felony and misdemeanor cases. For felonies, the fixed fee was \$600 for the first felony case and \$100 for each additional case. For misdemeanors, the fixed fee was \$275 for the first misdemeanor case and \$100 for each additional case. In addition, if an attorney was assigned to a case, but was released from the case prior to disposition the flat fees were \$100 for each felony case and \$50 for each misdemeanor case. Most attorney releases occur when another attorney is hired by the client, or the client forfeits their bond. There were additional fees that attorneys could choose, but predicting those fees for each case would likely be prohibitive.

Therefore, we propose using the standard fixed fees as described above. Our initial estimates for the amount due back to TIDC for the attorney's fees supplanted through the end of FY2023 equal approximately \$2.2 million. We have included a spreadsheet with that information.

(See Appendix C for spreadsheet mentioned in response.)

Travis County Action Plan

Each Quarterly grant report for this program will be re-calculated to consider the flat fee amount that would have been paid based on the above-described methodology. The revised request for reimbursement will be submitted to TIDC. The Travis County Auditor's office will work with TIDC to correct any incorrect payments.

Contact person(s): Jennifer Kraber

Completion date: December 5, 2023

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

TRAVIS COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2019	2020	2021
Population Estimate	1,260,620	1,285,526	1,285,526
Juvenile Assigned Counsel	\$127,214	\$191,256	\$64,214
Capital Murder	\$310,922	\$90,830	\$100,693
Adult Non-Capital Felony Assigned Counsel	\$5,921,674	\$4,916,047	\$4,581,488
Adult Misdemeanor Assigned Counsel	\$2,984,586	\$2,077,853	\$1,515,422
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$159,657	\$140,890	\$53,557
Adult Misdemeanor Appeals	\$9,689	\$3,225	\$0
Licensed Investigation	\$220,749	\$125,439	\$121,430
Expert Witness	\$578,610	\$463,466	\$262,906
Other Direct Litigation	\$232,221	\$169,278	\$21,811
Total Court Expenditures	\$10,545,322	\$8,178,284	\$6,721,520
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	NA	NA	NA
Total Public Defender Expenditures	\$3,185,290	\$3,649,022	\$5,678,914
Total Court and Administrative Expenditures	\$14,555,636	\$12,723,218	\$13,177,425
Formula Grant Disbursement	\$1,054,455	\$1,058,268	\$863,980
Reimbursement of Attorney Fees	\$7,148	\$7,663	\$0
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	2,952	1,821	1,391
Total Assigned Counsel Cases	26,522	21,185	18,094

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Travis County				
Year	2019	2020	2021	Texas 2021
Population (Non-Census years are estimates)	1,260,620	1,285,526	1,285,526	29,149,480
Felony Charges Disposed (from OCA report)	13,789	9,437	6,991	233,848
Felony Cases Paid	11,736	10,401	9,878	179,017
% Felony Charges Defended with Appointed Counsel	85%	110%	141%	77%
Felony Trial Court-Attorney Fees	\$6,232,596	\$5,006,877	\$4,682,181	\$117,687,277
Total Felony Court Expenditures	\$7,026,600	\$5,726,001	\$5,046,971	\$129,509,185
Misdemeanor Charges Disposed (from OCA report)	27,875	16,977	20,086	329,309
Misdemeanor Cases Paid	14,950	11,115	8,903	143,702
% Misdemeanor Charges Defended with Appointed Counsel	54%	65%	44%	44%
Misdemeanor Trial Court Attorney Fees	\$2,984,586	\$2,077,853	\$1,515,422	\$36,970,435
Total Misdemeanor Court Expenditures	\$3,046,820	\$2,116,802	\$1,546,344	\$37,596,320
Juvenile Charges Added (from OCA report)	1,224	935	434	15,024
Juvenile Cases Paid	2,662	1,431	680	22,404
Juvenile Attorney Fees	\$127,214	\$191,256	\$64,214	\$8,221,663
Total Juvenile Expenditures	\$127,214	\$191,256	\$64,214	\$8,392,554
Total Attorney Fees	\$9,513,742	\$7,420,101	\$6,315,373	\$166,177,254
Total ID Expenditures	\$14,555,636	\$12,723,218	\$13,177,425	\$277,829,412
Increase in Total Expenditures over 2001 Baseline	211%	172%	181%	213%
Total ID Expenditures per Population	\$11.55	\$9.90	\$10.25	\$9.52
Commission Formula Grant Disbursement	\$1,059,455	\$1,058,268	\$863,980	\$21,929,443
Cost Recouped from Defendants	\$7,148	\$7,663	\$0	\$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 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
- FY2021 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/8d98cc6722c9897/fy2021-ider-manual-final.pdf>

APPENDIX C – FINDING RESPONSE

TRAVIS COUNTY
DISTRICT AND COUNTY
CRIMINAL COURTS



BLACKWELL-THURMAN
CRIMINAL JUSTICE CENTER
P. O. BOX 1748
AUSTIN, TX. 78767
(512) 854-9244
FAX: (512) 854-4464

Date: November 29, 2023

To: Texas Indigent Defense Commission Monitoring Staff

From: Jennifer Kraber, Travis County Criminal Court Administrator

RE: Response to TIDC's Fiscal Report with Proposed Methodology to Correct Unintentional Supplanting of Grant

As part of the Indigent Defense Enhancement grant from the Texas Indigent Defense Commission (TIDC) agreed to help fund a pilot program to pay attorneys and hourly rate for defendants based on the highest charge brought against them. As part of this program, TIDC is not allowed to supplant funds that Travis County would have paid to the attorneys if we had continued to pay attorneys at the flat fee rate. Below we suggest a method to calculate that supplanted amount.

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(See Appendix for memo and spreadsheet mentioned in response.)

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Contact person(s): Jennifer Kraber

Completion date: November 29, 2023

Revised Quarterly Grant Reports Information

Award 212-20-D07	Reported	2015 Adjustment	0001 Adjustment	Adjustment	Revised
Q3 - 4/1/20-6/30/20	9,790.00	(3,091.42)	(3,091.40)	(6,182.81)	3,607.19
Q4 - 7/1/20-9/30/20	35,740.00	(8,134.29)	(8,134.29)	(16,268.58)	19,471.42
Total	45,530.00	(11,225.70)	(11,225.69)	(22,451.39)	23,078.61
Award 212-21-D11					
Q1 - 10/1/20-12/31/20	153,210.00	(26,770.36)	(26,770.30)	(53,540.66)	99,669.34
Q2 - 1/1/21-3/31/21	226,366.00	(43,300.57)	(43,300.54)	(86,601.12)	139,764.88
Q3 - 4/1/21-6/30/21	407,738.00	(79,651.63)	(79,651.60)	(159,303.23)	248,434.77
Q4 - 7/1/21-9/30/21	731,714.00	(124,468.45)	(124,468.33)	(248,936.78)	482,777.22
Total	1,519,028.00	(274,191.01)	(274,190.78)	(548,381.79)	970,646.21
Award 212-22-D11					
Q1 - 10/1/21-12/31/21	517,293.80	(104,498.65)	(111,099.78)	(215,598.43)	301,695.37
Q2 - 1/1/22-3/31/22	623,359.50	(149,097.19)	(149,096.95)	(298,194.14)	325,165.36
Q3 - 4/1/22-6/30/22	929,001.50	(177,777.72)	(177,777.60)	(355,555.33)	573,446.17
Q4 - 7/1/22-9/30/22	1,327,377.00	(270,486.10)	(270,485.72)	(540,971.82)	786,405.18
Total	3,397,031.80	(701,859.66)	(708,460.05)	(1,410,319.71)	1,986,712.09
Award 212-23-C16					
Q1 - 10/1/22-12/31/22	1,134,702.50	(261,432.61)	(261,432.89)	(522,865.51)	611,836.99
Q2 - 1/1/23-3/31/23	1,105,916.75	(271,564.84)	(271,505.47)	(543,070.31)	562,846.44
Q3 - 4/1/23-6/30/23	1,355,555.95	(346,219.23)	(346,291.29)	(692,510.52)	663,045.43
Q4 - 7/1/23-9/30/23*	1,400,120.01	(331,511.90)	(331,736.60)	(663,248.50)	736,871.51
Total	4,996,295.21	(1,210,728.58)	(1,210,966.25)	(2,421,694.83)	2,574,600.38
Totals	9,957,885.01	(2,198,004.96)	(2,204,842.76)	(4,402,847.72)	5,555,037.29

APPENDIX D – DISTRIBUTION LIST

The Honorable Andy Brown

Travis County Judge

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The Honorable Amy Clark Meachum

Local Administrative District Judge

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