



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Wichita County, Texas

FY2021 Indigent Defense Expenses

Final Report

August 7, 2023

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of Wichita County beginning on March 29, 2022. Email exchanges continued until December 22, 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, 2020, through September 30, 2021 (FY2021).

SUMMARY OF FINDINGS

- The FY 2021 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided and included general court expenditures which are unallowable for the IDER report.
- Four of the 41 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.
- Cost principles of the Uniform Grant Management Standards (UGMS) were not followed when preparing the PD addendum as it relates to compensation expenses.

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 Wichita 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 fee vouchers;
- General ledger transactions provided by the Wichita County auditor's office;
- Indigent Defense Expenditure Report (IDER);
- Attorney fee schedule;
- Any applicable contracts; and
- The County's local indigent defense plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Wichita County was created in 1858 and organized in 1882. The County is named after the Wichita Indians. Wichita County is located in the center of north Texas on the Oklahoma border. Most of the County lies in the eastern part of the Central Texas Rolling Red Plains, with the southeastern corner of the County part of the Central Texas Rolling Red Prairies.

The current population is estimated at 132,758 and the county seat is Wichita Falls. Wichita County occupies an area of 633 square miles, of which 5.3 square miles is water. The County is bordered by Archer, Baylor, Clay, and Wilbarger Counties in Texas and Cotton and Tillman Counties in Oklahoma.

Wichita County is served by three district courts, two county courts-at-law, 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 FY2021 indigent defense online grant application to assist in the provision of indigent defense services. Wichita County met the formula grant eligibility requirements and was awarded \$128,831 in formula grant award.

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 are paid. Wichita County prepared and submitted the FY 2021 IDER in accordance with Texas Government Code Section §79.036(e); however, the reported amounts were not supported by the financial data provided.

The general ledger data for attorney fee expenses includes both criminal and civil cases. During the FY2021 reporting year, Wichita County underwent a financial software conversion. Additionally, new personnel were assigned to prepare the IDER. TIDC summarized the various general ledger accounts and compared the results to the reported amounts on the IDER. The amounts did not support each other. Further review of spreadsheets showing the detailed attorney fee payments allocated to each court by level of case provided some assurance that amounts reported for attorney fees in two district courts were accurate, while the 78th District Court and County Court-at-Law #2 had discrepancies of \$82.50 and \$300.00, respectively. County Court-at-Law #1 appeared to underreport \$13,582 and the magistrate court overreported \$21,550. These errors collectively resulted in an on overall overreporting on the IDER by \$7,585.50.

Additionally, the County included some unallowable general court expenditures while excluding some eligible expenditures. The review of the general ledger showed amounts attorneys were reimbursed for copies, postage, and filing fees expenses. These reimbursed expenses should have been reported in the “Other Litigation” expense column on the IDER.

TIDC reviewed 22 vouchers reported in the Investigation, Expert, and Other Litigation expense categories. Ten of these vouchers appeared to be for mental health evaluations, but only three included documentation that the request for the evaluation was exclusively for the defense team. The remaining seven vouchers indicated a mental health evaluation for competency to stand trial. These seven vouchers for competency evaluations are considered general court expenditures and are not eligible to be included on the IDER.

A request for a mental health evaluation to determine competency to stand trial is typically a general court expense. The mental health examinations that are considered 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 for a mental health expert working for the defense under derivative attorney-client privilege to assist in the criminal defense of an indigent defendant must be documented to include the expenditure on the IDER. An order granting an *ex parte* defense motion requesting funds for a mental health defense expert is generally sufficient to establish eligibility as an indigent defense expenditure. An evaluation of competency to stand trial is not an eligible indigent defense expense, regardless of which party may initiate consideration of ordering such an evaluation.

The expenditures detailed above 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 ineligible costs. This could mean that the FY2021 formula grant for Wichita County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual: <http://www.tidc.texas.gov/media/8d98cc6722c9897/fy2021-ider-manual-final.pdf>

Recommendation:

1. The County must develop procedures to verify the accuracy of IDER data prior to the submission of the report.
2. The County must develop procedures to identify and record expenses for mental health experts requested by the appointed defense counsel for the exclusive use of defense counsel in preparation of a defense. Procedures must distinguish such expenses from examinations to determine competency to stand trial, which are considered general court expenses.
3. The County must identify and report to TIDC the amount of the mental health expenses reported that were for competency evaluations in the FY2021 IDER.

Wichita County Action Plan

1. *Wichita County has now had the new accounting system in place for going on two full fiscal years and our staff that was new to the FY21 IDER is still in place and has been able to generate reports and create procedures to ensure the accuracy of future IDER's. Wichita County has been able to adjust where certain items are put in the General Ledger to separate out eligible items and ineligible items. Civil cases will be excluded from the General Ledger reports. Copies, Postage, and Filing Expenses will be separated out into their own line on the General Ledger and be reported as Other Litigation. We will use to the reports to proof to the IDER and vice versa before submitting.*
2. *Wichita County has identified the difference between mental health experts requested by the defense and general court mental health expenses. General court Competency to Stand Trial expenses will now be in a separate line item from the Appointed Defense Council eligible expenses.*
3. *The amount reported by Wichita County for competency evaluations was \$22,100.00.*

Contact person(s): *Cheryll Jones*

Completion date: *6/26/2023*

TIDC Reply to County response:

TIDC staff will recalculate the FY2022 formula grant based on the identified \$22,100 over-reporting on competency evaluations and \$7,585.50 attorney fee over-reporting identified. The TIDC Board will be presented the adjusted amount for further consideration of any Board action.

Finding Two

Four of the 41 attorney fee vouchers reviewed for the appointed attorneys appear to be court orders signed by the judge.

The Code of Criminal Procedure (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.

Four of the payment records reviewed did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05(c) because the documents were not itemized vouchers submitted by the attorneys to the judges. These four payment records appear to be court orders to pay prepared for the judges. The judge's order to pay an attorney, standing on its own, is insufficient to satisfy the requirement that a form itemizing the services performed be submitted to the judge. Therefore, Wichita County is not in compliance with Article 26.05(c).

Recommendation:

The attorneys must submit a form itemizing the services performed and the amount billed to the judges for approval.

Wichita County Action Plan

Wichita County Auditor's Office and District Judges will ensure that the attorney submits an itemized form requesting payment (even for flat fees) before signing or payment will not be made to the attorney in order to be compliant with Article 26.05(c).

Contact person(s): Cheryll Jones

Completion date: 6/26/2023

Finding Three

Under the Uniform Grant Management Standards (UGMS), which was in effect for reporting period under review, or the Texas Grant Management Standards (TxGMS), which replaced UGMS and is in effect going forward, compensation may be counted in one of two ways. Compensation expenses can be calculated as paid in the reporting period or accrued for the reporting period. The spreadsheet used to calculate the various salary and wages reported for the Wichita County Public

Defender Office included 100% of wages paid on October 1, 2020, and 100% of wages paid on October 8, 2021. This was 27 bi-weekly checks and not 26 that is typical for a year. The related benefits were also calculated for 27 pay periods.

The reporting period under review is October 1, 2020, through September 30, 2021. As Wichita County did not appear to accrue the wages, but instead included the wages paid during the reporting period, counting 100% of the October 1, 2020, payroll would be correct but counting the payroll paid October 8, 2021, would be incorrect because it was outside the reporting period. If the accrual method were used, it is possible that none of the October 1, 2020, payroll would have been included while 100 % of the October 8 payroll could have been included. This would depend on the number of days between the end of payroll period and the date of checks. However, by including 27 payroll periods, Wichita County overstated the amount of compensation expense for the public defender office on the IDER.

Additionally, it appears that the salary for a non-public defender employee was used in place of a public defender employee on the spreadsheet. The biweekly payroll for the “PD-Other Salaries” ledger was \$28,109.56. TIDC noted during the verification process that Mr. Joseph Vrechek’s salary, which is included on the “PD-Other Salaries” ledger was not included on the spreadsheet, while Mr. Brennan Brady was included in the spreadsheet but was not on the general ledger. As the salaries varied between the two employees, the calculated total was incorrect.

Recommendation:

1. The County must choose one accounting method to report PD expenses and consistently apply the method chosen.
2. The County must recalculate the public defender office compensation expense and report to TIDC the corrected amount for the FY2021 IDER Public Defender Addendum.

Wichita County Action Plan

1. *Wichita County uses a cash basis for Payroll. When switching software’s there was some discrepancy in this date and the new system used the payroll end date causing us to expense 27 pay periods on the FY21 IDER. For the FY22 IDER Wichita County only expensed 25 pay periods. Going forward there will be 26 pay periods for each IDER.*
2. *The correct amount for the FY21 IDER Public Defender Addendum is \$1,141,313.42.*

Contact person(s): *Cheryll Jones*

Completion date: *6/26/2023*

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

WICHITA COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2019	2020	2021
Population Estimate	133,814	132,756	132,756
Juvenile Assigned Counsel	\$95,802	\$196,354	\$117,590
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$771,060	\$569,205	\$543,867
Adult Misdemeanor Assigned Counsel	\$225,413	\$205,322	\$158,407
Juvenile Appeals	\$0	\$0	\$2,700
Adult Felony Appeals	\$36,089	\$0	\$0
Adult Misdemeanor Appeals	\$450	\$0	\$0
Licensed Investigation	\$37,563	\$21,297	\$41,478
Expert Witness	\$116,500	\$92,736	\$8,343
Other Direct Litigation	\$57,795	\$43,890	\$0
Total Court Expenditures	\$1,340,672	\$1,128,805	\$872,384
Administrative Expenditures	\$69,419	\$75,753	\$0
Funds Paid by Participating County to Regional Program	\$0	\$51,571	\$51,571
Total Public Defender Expenditures	\$1,178,073	\$1,125,580	\$1,679,977
Total Court and Administrative Expenditures	\$2,588,164	\$3,381,709	\$2,603,932
Formula Grant Disbursement	\$150,811	\$155,147	\$128,831
Reimbursement of Attorney Fees	\$46,814	\$44,814	\$51,571
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	1,887	942	851
Total Assigned Counsel Cases	1,886	2,302	1,654

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Wichita County				
Year	2019	2020	2021	Texas 2021
Population (Non-Census years are estimates)	133,814	132,756	132,756	29,149,480
Felony Charges Disposed (from OCA report)	2,003	1,372	1,345	233,848
Felony Cases Paid	1,835	1,361	1,308	179,017
% Felony Charges Defended with Appointed Counsel	92%	99%	97%	77%
Felony Trial Court-Attorney Fees	\$771,060	\$569,205	\$543,867	\$117,687,277
Total Felony Court Expenditures	\$934,931	\$712,897	\$588,577	\$129,509,185
Misdemeanor Charges Disposed (from OCA report)	2,521	1,479	1,194	329,309
Misdemeanor Cases Paid	1,666	1,152	954	143,702
% Misdemeanor Charges Defended with Appointed Counsel	66%	78%	80%	44%
Misdemeanor Trial Court Attorney Fees	\$225,413	\$205,322	\$158,407	\$36,970,435
Total Misdemeanor Court Expenditures	\$244,323	\$213,853	\$163,517	\$37,596,320
Juvenile Charges Added (from OCA report)	113	99	77	15,024
Juvenile Cases Paid	250	731	242	22,404
Juvenile Attorney Fees	\$95,802	\$196,354	\$117,590	\$8,221,663
Total Juvenile Expenditures	\$97,482	\$196,971	\$117,590	\$8,392,554
Total Attorney Fees	\$1,125,814	\$970,882	\$822,564	\$166,177,254
Total ID Expenditures	\$2,588,164	\$2,381,709	\$2,603,932	\$277,829,412
Increase in Total Expenditures over 2001 Baseline	239%	212%	241%	213%
Total ID Expenditures per Population	\$19.34	\$17.4	\$19.61	\$9.52
Commission Formula Grant Disbursement	\$150,811	\$155,147	\$128,831	\$21,929,443
Cost Recouped from Defendants	\$46,814	\$44,814	\$66,895	\$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 – DISTRIBUTION LIST

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