



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Hidalgo County, Texas**

**FY2020 Indigent Defense Expenses**

**Final Report**

**April 10, 2023**

# Table of Contents

EXECUTIVE SUMMARY .....	3
DETAILED REPORT .....	4
BACKGROUND INFORMATION .....	4
County Background .....	4
Commission Background.....	4
Formula Grant.....	4
DETAILED FINDINGS AND RECOMMENDATIONS .....	5
APPENDICES .....	9
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT.....	10
APPENDIX B – CRITERIA.....	12
APPENDIX C – DISTRIBUTION LIST.....	13

# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring review of Hidalgo County beginning on October 13, 2021. Onsite review was conducted 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

- 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.

## 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 Hidalgo 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 remotely with the county auditor and her staff. The fiscal monitor reviewed

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

The area now known as Hidalgo County was part of disputed territory during the Mexican War. After the Treaty of Guadalupe Hidalgo of 1848, the area became part of San Patricio County, which was further subdivided. Hidalgo County was created on January 24, 1852, from parts of Cameron and Starr counties. The County is named after Miguel Hidalgo y Costilla, known as the “Father of Mexican Independence.” Miguel Hidalgo y Costilla was a Jesuit priest that gave the “cry for Mexico’s independence” from Spain.

Hidalgo County is located in far south Texas. The current population is estimated at 888,958, and the county seat is Edinburg. Hidalgo County occupies an area of 1,583 square miles, of which 12 square miles is water. The County is bordered by Brooks, Cameron, Kenedy, Starr, and Willacy Counties in the US and Mexico.

Hidalgo County is served by 12 district courts and ten 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. Hidalgo County met the formula grant eligibility requirements and was awarded \$664,502 in formula grant awards.

## DETAILED FINDINGS AND RECOMMENDATIONS

### Finding One

TIDC examined 99 attorney fee vouchers to determine whether indigent defense payments met the requirements of Criminal Code of Procedure (CCP) Article 26.05(b) and the local fee schedule. Nine of the 99 attorney fee vouchers reviewed for FY2020 did not appear to be paid in accordance with the published fee schedule as required by Article 26.05(b).

Section 8.01 (a) of the Hidalgo County Indigent Defense Plan provides for the following attorney fee schedule for felony cases:

- (a) Appointed attorneys for felony cases (sic) shall be paid \$70 per hour for all documented out-of-court and in-court time, \$100 per hour for all documented time that is actually spent on the case that reasonable professionals would agree was objectively necessary for a qualified criminal defense attorney in the community to represent the client.

In Section 8.01 (c), the plan provides for hourly fees for misdemeanor trials that mirrors the language above for felony cases.

The wording of these parts of the fee schedule is ambiguous. It appears to authorize \$70 per hour for all out-of-court and in-court time, and then goes on to authorize \$100 per hour for all documented time actually spent on the case. Hidalgo County should clarify this language in its indigent defense plan.

TIDC found 14 vouchers in which the attorney requested an amount that was in line with the appropriate fee schedule; however, the amount approved for payment was changed by the court. On five of these vouchers, the judge reduced the payment requested by the attorney, checking a box and writing that the attorney overbilled the number of hours. For the remaining nine vouchers, the court approved a payment above the flat rate amount requested, checking a box that indicated the change was due to the complexity of case. The flat rate amounts requested by the attorneys were based on the fee schedule; however, when the judges approved the higher amounts, they approved amounts outside the limits provided in the fee schedule. These nine vouchers with payments authorized above the amounts provided for in the fee schedule are not in compliance with CCP 26.05(b).

Additionally, the Hidalgo County fee schedule includes the following exception: “For good cause or exceptional circumstances, an appointed attorney may request payment at an hourly rate above the rates specified in subsections (a) and (b) of this Rule, subject to review and approval by the judge presiding over the case as specified in Rule 8.02.” Although this exception is provided in the fee schedule, it does not appear to comply with current case law. TIDC’s Indigent Defense Plan Instructions asked the judges to consider the *Wice* decision in setting the fee schedule. Following are those instructions:

*NEW Attorney Fee Schedule Information/ Wice decision*

*Judges should also review and amend, as needed, their attorney fee schedules to comply with the Court of Criminal Appeals opinion In re State ex rel. Wice v. Fifth Judicial Dist. Court of Appeals, 2018 Tex. Crim. App. LEXIS 1121. The majority opinion by Judge Newell was issued on November 21, 2018.*

*The Court of Criminal Appeals held that a local rule authorizing the trial court to “opt out” of its own fee schedule conflicts with a statute (Article 26.05, Code of Criminal Procedure) that requires payment according to that fee schedule. The decision has implications for fee schedules across the state since many would permit payments outside of the established flat or hourly fees provided. Examples of potentially suspect language in fee schedules include provisions such as the following:*

- “For good cause or exceptional circumstances, an appointed attorney may request payment at a rate above the rates specified ..., subject to review and approval by the judge presiding over the case.”*
- “The Court may deviate from this schedule for good cause.”*
- “Judge may deviate from above schedule in Judge's discretion.”*
- “In the interest of justice, for just cause, or in exceptional cases, the Court in its discretion may approve fees that differ from this schedule.”*

*According to the Court's opinion in Wice, all portions of a fee schedule should state reasonable fixed rates or minimum and maximum hourly rates in line with Article 26.05, Code of Criminal Procedure. Judges should review their attorney fee schedules used in criminal and juvenile cases. Any fee schedules that are revised should be submitted with your indigent defense plans using the “Forms” tab.*

The exception that the judges have included in the fee schedule does not appear to comply with Article 26.05 of the Code of Criminal Procedure that requires that payments be made according to the fee schedule.

**Recommendation:**

Judges should review the fee schedules and take formal action to clarify hourly rates and adopt a new fee schedule that is consistent with current payment practices in accordance with the requirements of CCP Article 26.05(b) and current case law.

Procedures should be developed to verify that the approved rate of pay for each voucher is within parameters of the published fee schedule to meet the requirements of CCP Article 26.05(b).

## **Hidalgo County Action Plan**

*In addressing the "Detailed Findings and Recommendations" set forth in the Fiscal Monitoring Report, the following is the plan of action.*

1. *Steps planned by management to address the conditions noted:*
  - a. *Ambiguity: Concerns are raised regarding ambiguous language in the current "Hidalgo County Local Rules to Implement the Texas Fair Defense Act" pertaining to the "in court" and "out of court" hourly rates. To address this matter, the "Local Rules" will be amended to clarify that for both District Court felony cases and County Court at Law misdemeanor cases the billing will be \$100.00 hourly for "In Court" time and \$70.00 for "Out of Court" time.*
  - b. *Wice Decision": The "Wice" decision discusses the issue surrounding a Judges authority to exercise discretion in setting the amount of compensation. Upon review of this decision the "Hidalgo County Local Rules to Implement the Texas Fair Defense Act" will be amended to comply with the "Wice" case. Rule 8 which grants Judges discretion and authority to modify payment for "good cause" or "exceptional circumstances" will be removed from the Rules. All other portions of the Rules which are impacted by the "Wice" decision will also be amended to comply with said decision.*
  - c. *As part of this process the County Court at Law Judges will take this opportunity to review the "fixed rate" compensation schedule for representation of misdemeanor cases.*

### **Completion date:**

2. *The implementation date: A committee will be formed for the above purpose comprised of a District Court Judge, a County Court at Law Judge, a representative from the Indigent Defense Office and a representative from the Criminal Defense bar. The purpose of this committee will be to address the preceding concerns.*

*The County Court at Law Judges will meet to review the "fixed rate" compensation schedule for misdemeanors. Once this review is completed, the final result will be forwarded to the Indigent Defense Office to be incorporated into the Rules.*

*It is anticipated that this process of making amendments will take from four to six months.*

*After the completion of this process, it is anticipated that the final "Rules" will be submitted to the Board of Judges meeting for approval within sixty days. Thus, the total period for implementation is eight months.*

**Contact person(s):**

3. *Responsibility for implementation: The responsibility for implementation of the amended "Rules" will continue to be with the Indigent Defense Office combined with the District Court Judge and the County Court at Law Judge who oversee the Indigent Defense Office.*



# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>HIDALGO COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Population Estimate	860,288	890,414	888,958
Juvenile Assigned Counsel	\$344,745	\$269,541	\$253,363
Capital Murder	\$294,935	\$350,975	\$365,469
Adult Non-Capital Felony Assigned Counsel	\$3,262,331	\$3,191,822	\$2,492,323
Adult Misdemeanor Assigned Counsel	\$1,973,581	\$2,237,461	\$1,518,270
Juvenile Appeals	\$11,200	\$0	\$0
Adult Felony Appeals	\$241,818	\$174,374	\$139,475
Adult Misdemeanor Appeals	\$4,750	\$0	\$900
Licensed Investigation	\$64,001	\$23,946	\$19,595
Expert Witness	\$57,238	\$63,907	\$76,076
Other Direct Litigation	\$170,239	\$150,119	\$55,581
Total Court Expenditures	\$6,424,836	\$6,462,143	\$4,921,051
Administrative Expenditures	\$438,752	\$437,561	\$459,740
Total of Limited Scope 15.17/ Automatic Bail Review Hearings	N/A	N/A	N/A
Total Public Defender Expenditures	\$1,276,815	\$1,229,084	\$1,256,329
Total Court and Administrative Expenditures	\$8,140,404	\$8,128,788	\$6,637,120
Total Limited Scope cases	N/A	N/A	N/A
Total Public Defender Cases	3,067	2,984	1,928
Total Assigned Counsel Cases	12,015	12,573	8,896
Reimbursements of Attorney Fees	\$316,789	\$249,634	\$235,838
Formula Grant Disbursement	\$672,476	\$674,911	\$664,502

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Hidalgo County</b>				
<b>Year</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Texas 2020</b>
Population (Non-Census years are estimates)	860,288	890,414	888,958	29,149,480
Felony Charges Disposed (from OCA report)	6,004	6,097	4,408	207,142
Felony Cases Paid	4,036	4,099	3,171	183,123
% Felony Charges Defended with Appointed Counsel	67%	67%	72%	88%
Felony Trial Court-Attorney Fees	\$3,557,266	\$3,542,797	\$2,857,792	\$122,376,695
Total Felony Court Expenditures	\$3,728,563	\$3,642,595	\$2,961,437	\$136,468,400
Misdemeanor Charges Disposed (from OCA report)	15,312	16,141	10,507	304,810
Misdemeanor Cases Paid	10,254	10,830	7,129	149,070
% Misdemeanor Charges Defended with Appointed Counsel	67%	67%	68%	49%
Misdemeanor Trial Court Attorney Fees	\$1,973,581	\$2,237,461	\$1,518,270	\$35,988,801
Total Misdemeanor Court Expenditures	\$1,976,012	\$2,242,594	\$1,518,775	\$36,626,732
Juvenile Charges Added (from OCA report)	785	778	562	18,689
Juvenile Cases Paid	763	605	508	30,149
Juvenile Attorney Fees	\$344,745	\$269,541	\$253,363	\$8,561,322
Total Juvenile Expenditures	\$345,790	\$270,181	\$254,213	\$8,753,040
Total Attorney Fees	\$6,133,359	\$6,224,172	\$4,769,800	\$171,807,987
Total ID Expenditures	\$8,140,404	\$8,128,788	\$6,637,120	\$271,232,154
Increase in Total Expenditures over 2001 Baseline	292%	291%	220%	205%
Total ID Expenditures per Population	\$9.46	\$9.13	\$7.47	\$9.30
Commission Formula Grant Disbursement	\$672,476	\$674,911	\$664,502	\$25,955,677
Cost Recouped from Defendants	\$316,789	\$249,634	\$235,838	\$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

The Honorable Richard F Cortez.  
Hidalgo County Judge  
100 E. Cano, 2<sup>nd</sup> Floor  
Edinburg, TX 78539  
[richard.cortez@co.hidalgo.tx.us](mailto:richard.cortez@co.hidalgo.tx.us)

The Honorable Noe Gonzalez.  
Local Administrative District Judge  
370th District Court  
100 N Closner, 1<sup>st</sup> Floor  
Edinburg, TX 78539  
[gnz3@hotmail.com](mailto:gnz3@hotmail.com)

The Honorable Omar Maldonado  
Local Administrative Statutory County Court Judge  
100 N Closner, Annex Building  
Edinburg, TX 78539  
[eomarmaldonado@gmail.com](mailto:eomarmaldonado@gmail.com)

The Honorable Mario E Ramirez, Jr.  
Chairman of the Juvenile Board  
100 N Closner  
Edinburg, TX 78539  
[meramirezjr@yahoo.com](mailto:meramirezjr@yahoo.com)

Ms. Linda Fong  
County Auditor  
2808 S Business Highway 281  
Edinburg, TX 78539  
[linda.fong@auditor.co.hidalgo.tx.us](mailto:linda.fong@auditor.co.hidalgo.tx.us)

Mr. Isidro Sepulveda  
Indigent Defense Coordinator  
100 N Closner, 1<sup>st</sup> Floor  
Edinburg, TX 78539  
[indigent.defense@co.hidalgo.tx.us](mailto:indigent.defense@co.hidalgo.tx.us)

Mr. Geoffrey Burkhart  
Executive Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Wesley Shackelford  
Deputy Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Edwin Colfax  
Grants Program Manager, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701