



**TEXAS INDIGENT DEFENSE
COMMISSION**

Fiscal Monitoring Report

Hutchinson County, Texas

FY 2014 Indigent Defense Expenses

Final Report

January 22, 2016

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EXECUTIVE SUMMARY

Hutchinson County's on-site fiscal monitoring visit was conducted August 3-4, 2015. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants.

The expenditure period of October 1, 2013 to September 30, 2014 (FY2014) was reviewed during the fiscal monitoring visit.

Summary of Findings

- Hutchinson County's initial reporting of criminal indigent defense expenses for FY14 on the Indigent Defense Expenditure Report (IDER), which was utilized to calculate the formula grant funds, included ineligible expenses related to civil matters.
- Attorney level detail reporting required by HB 1318 for FY14 was not reported initially, however it was later provided. The attorney detail amounts reported resulted in changes to the initially reported court expenditure reports in the IDER for both case numbers and amounts. The amounts in the attorney detail portion of the report were not substantiated by the records provided and appear to underreport the correct amounts.
- Attorney fee vouchers adopted by the judges and included in the County's indigent defense plans did not include a place for an attorney to request an amount of payment, nor a place for the judges to provide written explanations for variance in amounts approved. These items are required by Article 26.05(c) of the Texas Code of Criminal Procedure.
- One expense for investigation was identified in the reviewed sample which was mis-categorized as attorney fees.

Objective

The objectives of this review were to:

- 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 services;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns on the indigent defense program requirements.

Scope

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grants during FY2014. Records provided by the Hutchinson County Auditor's Office as well as records from the office of the District Court Administrator were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor met with the assistant county auditor, the county judge, and the district judge administrator. The fiscal monitor reviewed:

- random samples of paid attorney fees;
- general ledger transactions provided by the Hutchinson County Auditor's Office;
- IDER and attorney fee schedule;
- public attorney appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- the county's local indigent defense plan.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Hutchinson County comprises the Borger, TX Micropolitan Statistical Area, which is also included in the Amarillo-Borger, TX Combined Statistical Area. The County serves an estimated population of 21,463 and occupies an area of 895 square miles, of which 7.5 square miles is water. The County is a political subdivision of the State of Texas. Hutchinson is located in the northern portion of the Texas Panhandle and is bordered by Hansford, Roberts, Carson, Moore, Potter, Gray, Sherman and Ochiltree Counties.

Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82nd Texas Legislature changed the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council, and is administratively attached to the Office of Court Administration (OCA).

The Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the constitution and state law.

The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. The Commission 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 FY 2014 indigent defense on-line grant application to assist in the provision of indigent defense services. Hutchinson County met the formula grant eligibility requirements and was awarded \$45,691 for FY 2014.

Discretionary Grant

Hutchinson County did not apply for a discretionary grant for FY 2014; therefore no discretionary grant funds were reviewed.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

The County included the cost of attorney fees on civil cases paid by the county with the criminal indigent defense expenses on the FY 2014 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036(e). Expenses associated with civil cases are ineligible and may not be included in the IDER.

On November 3, 2014, the County Auditor submitted the FY2014 IDER court expenditure report sections, however the report initially did not include the newly required attorney detail portion of the report. The attorney detail portion of the report was provided on June 9, 2015. The initial report included \$382,823.49 in attorney fees. A review of the general ledger showed that *all* appointed attorney fees were included in the report, including ineligible amounts paid for civil matters such as Child Protective Services Cases (CPS) cases and guardianship cases. The 316th District Court heard CPS cases as well as juvenile and adult felony cases. The county court ledger shows that guardianship cases are occasionally heard by the county court. These civil cases are identified with a unique case number format.

The IDER has overstated the county's criminal indigent defense expenditures due to the inclusion of civil case costs. Because the amounts reported are part of the basis for Formula Grant awards, the FY 2015 Formula Grant for Hutchinson County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual found both at the following website, as well as, included with this report.

<http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>

Recommendation:

The County must submit corrected expenditures and case counts in order for the Commission to consider the effect on the formula grant calculation.

The appropriate county personnel should be trained to identify the difference between civil cases and criminal cases. Case numbering conventions used by the courts may be used to help track civil case expenditures separately.

The County could maintain separate general ledger accounts for both the civil cases and juvenile cases heard by the 316th District court to simplify reporting given the functionality of the financial software in use. While the software does not download to Excel easily, if the general ledger was already separated by case types this would help facilitate accurate reporting.

County Response:

The FY2014 IDER total attorney fees paid amount should have been \$285,857.25 and the investigative fees should be \$500.00.

Hutchinson County Action Plan

Procedures have been installed to properly prepare the Indigent Defense Expenditure Report on a timely basis.

Contact person(s): Mark Dill, County Auditor

Completion date: November 2, 2015

Additional Reviewer Comments:

Per the email received on December 17, 2015, the county response indicates that Hutchinson County overstated the FY2014 IDER by \$96,466.24. The effect of this overstatement resulted in the formula grant calculation to be greater by \$5,002.00. These results will be presented to the TIDC Board Members at the next scheduled meeting and Hutchinson County will be notified of any resulting actions thereafter.

Finding Two

The IDER was originally submitted without the required attorney level detail portion. When the online report was re-opened to allow the incomplete report to be completed, the originally reported court expenditure report figures were changed, apparently to reconcile with the attorney detail portion of the report. The new amounts reported appear to understate the amounts actually spent based on the general ledger.

The passage of House Bill 1318 of the 83rd Legislature amended the Texas Government Code §79.036 to require counties to provide the number of indigent defense cases by attorney. This new reporting requirement was implemented for the FY 2014 IDER. The new language reads as follows: SECTION 6. Effective September 1, 2014, Section 79.036, Government Code, is amended by adding Subsection (a-1) to read as follows:

Texas Government Code § 79.036. Indigent Defense Information (a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j) (4), Code of Criminal Procedure.

Article Texas Government Code § 79.036(e) provides:

(e) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the commission in the form and manner prescribed by the commission and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county: (1) in each district, county, statutory county, and appellate court; (2) in cases for which a private attorney is appointed for an indigent defendant; (3) in cases for which a public defender is appointed for an indigent

defendant; (4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and (5) for investigation expenses, expert witness expenses, or other litigation expenses. (f) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the commission under this section.

As the FY2014 IDER was the first time the new attorney detail reporting was required, it is understandable that this section of the reporting was initially overlooked. Efforts were made to inform the auditor and county judge that without the attorney detail reporting the county was out of compliance with the new statute and formula grant payments would be held. The county judge accepted the responsibility to provide the information and sought help from the clerks' offices to complete it.

The clerks had reports titled "Attorney Expenditures Report" and these reports provided information about amounts paid to each attorney by case type and court; however, these reports were not inclusive of all the payments made for the indigent defense cases disposed for the fiscal year under review. The IDER was opened up to allow for the attorney detail reporting to be added, however when adding these amounts the prior submitted information was also changed, apparently to reconcile with the attorney detail amounts, instead of the attorney detail amount supporting the original amounts entered by the County Auditor.

Recommendation:

The County Auditor should implement a record keeping framework consistent with the IDER instructions manual to simplify data collection needed to complete the report.

The general ledger maintained by the County Auditor is the official record of the county's expenditures. This record should identify the amounts expended in each court and by each type of case for legal services provided to indigent defendants during each fiscal year in four categories: 1) attorney fees; 2) investigation expenses; 3) expert witness expenses; and 4) other litigation expenses.

The "Attorney Expenditure Report" provided by the clerks offices appears to be a tool to support the official record but should not be solely relied upon to provide the data for preparation of the IDER.

County Response:

The FY 2015 Indigent Defense Expenditure Report was prepared on a timely basis.

Hutchinson County Action Plan

Procedures have been installed to properly prepare the Indigent Defense Expenditure Report on a timely basis.

Contact person(s): Mark Dill, County Auditor

Completion date: November 2, 2015

Finding Three

Code of Criminal Procedure Article 26.04(a) requires the courts to adopt and publish written countywide procedures for providing indigent defense services, commonly known as an indigent defense plan. As part of these procedures, the judges must adopt an attorney fee voucher form consistent with CCP Article 26.05(c). Government Code Section 79.036 requires that these countywide procedures be provided to the Commission biennially. Hutchinson County adopted and properly submitted these Court plans. Each plan included an approved attorney fee voucher to be used for the respective level of court, however, the monitoring review revealed that the approved attorney fee voucher was not in use by the County. Instead, an “Order Compensating Attorney” was submitted by each court.

The “Order Compensating Attorney” provides almost all the necessary information for the county auditor to prepare the IDER as required by rule §174.10, Title 1, Texas Administrative Code. However, it does not provide the attorney the opportunity to submit an itemized voucher as required by Article 26.05 (c) of the Texas Code of Criminal Procedure or to request a specific payment amount, which the judge may approve or disapprove as required by Article 26.05 (c) of the Texas Code of Criminal Procedure. It also does not provide the level of case detail, which is needed to determine if the fee requested and approved follows the fee schedule.

Recommendation:

The judges need to review the attorney fee voucher form submitted as part of the indigent defense plan. The attorney fee voucher approved in the indigent defense plan does not provide for approval of the presiding judge nor does it provide space for an explanation for any variance from the billed amount that the judge may approve which is required by Article 26.05 (c) of the Texas Code of Criminal Procedure. The judges should also review and implement procedures to include the submission of the attorney fee vouchers by the attorneys, approval process by the presiding judges, and the submission to the auditor’s office for payment.

County Response:

Hutchinson County Action Plan

All County Judges are using attorney voucher forms in preparation of Orders of Compensation to pay counsel.

Contact person(s): Judge William D. Smith, 84th District Court Judge

Completion date: December 1, 2015

Finding Four

Of the seventy-eight (78) payment orders reviewed, one payment order was made to an investigator. The order was titled "Order Compensating Investigator" and the amount was \$500.00. This amount was included on the general ledger as an appointed attorney fee and was not separately listed on the IDER under investigative expenses in accordance with Texas Government Code §79.036(e). The total indigent defense expenditure is not affected, but the classification of the expenditures is not properly reported.

Recommendation:

Investigative expenses should be tracked and reported separately from attorney fees paid. The general ledger should have a separate account to identify cost other than attorney fees. Appropriate personnel should be trained to identify the difference and be able to data enter to other account.

County Response:

Hutchinson County Action Plan

Procedures have been installed to properly prepare the Indigent Defense Expenditure Report on a timely basis.

Contact person(s): Mark Dill, County Auditor

Completion date: November 2, 2015

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

| HUTCHINSON COUNTY INDIGENT DEFENSE EXPENDITURES | | | |
|---|--------------|--------------|--------------|
| Expenditures | 2012 | 2013 | 2014 |
| Population Estimate | 22,236 | 22,301 | 21,463 |
| Juvenile Assigned Counsel | \$17,510.00 | \$34,510.00 | \$56,650.00 |
| Capital Murder | .00 | .00 | .00 |
| Adult Non-Capital Felony Assigned Counsel | \$269,167.00 | \$223,255.00 | \$145,799.24 |
| Adult Misdemeanor Assigned Counsel | \$20,580.00 | \$24,730.84 | \$21,950.00 |
| Juvenile Appeals | .00 | .00 | .00 |
| Adult Felony Appeals | .00 | .00 | .00 |
| Adult Misdemeanor Appeals | .00 | .00 | .00 |
| Licensed Investigation | .00 | .00 | .00 |
| Expert Witness | .00 | .00 | .00 |
| Other Direct Litigation | .00 | .00 | .00 |
| Total Court Expenditures | \$307,257.00 | \$282,495.84 | \$224,399.24 |
| Administrative Expenditures | .00 | .00 | .00 |
| Funds Paid by Participating County to Regional Program | \$11,606.00 | \$11,606.00 | .00 |
| Total Court and Administrative Expenditures | \$318,863.00 | \$294,101.84 | \$224,399.24 |
| Formula Grant Disbursement | \$14,501.00 | \$28,871.00 | \$45,691.00 |
| Equalization Disbursement | \$14,841.00 | .00 | .00 |
| Discretionary Disbursement | .00 | .00 | .00 |
| Reimbursement of Attorney Fees | .00 | \$7,382.00 | \$32,078.00 |
| Reimbursement by State Comptroller for Writs of Habeas Corpus | .00 | .00 | .00 |
| Total Assigned Counsel Cases | 207 | 196 | 279 |

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

| Hutchinson County | | | | |
|---|--------------|--------------|--------------|-------------------|
| Year | 2012 | 2013 | 2014 | Texas 2014 |
| Population (Non-Census years are estimates) | 22,236 | 22,301 | 21,463 | 26,642,612 |
| Felony Charges Added (from OCA report) | 194 | 236 | 200 | 270,401 |
| Felony Cases Paid | 128 | 93 | 165 | 192,735 |
| % Felony Charges Defended with Appointed Counsel | 65.98% | 39.41% | 82.50% | 71.28% |
| Felony Trial Court-Attorney Fees | \$269,167.00 | \$223,255.00 | \$145,799.24 | \$104,577,627.50 |
| Total Felony Court Expenditures | \$269,167.00 | \$223,255.00 | \$145,799.24 | \$121,013,238.56 |
| Misdemeanor Charges Added (from OCA report) | 551 | 589 | 527 | 530,335 |
| Misdemeanor Cases Paid | 60 | 79 | 85 | 223,045 |
| % Misdemeanor Charges Defended with Appointed Counsel | 10.89% | 13.41% | 16.13% | 42.06% |
| Misdemeanor Trial Court Attorney Fees | \$20,580.00 | \$24,730.84 | \$21,950.00 | \$38,286,859.48 |
| Total Misdemeanor Court Expenditures | \$20,580.00 | \$24,730.84 | \$21,950.00 | \$39,406,492.35 |
| Juvenile Charges Added (from OCA report) | 0 | 0 | 0 | 31,996 |
| Juvenile Cases Paid | 19 | 23 | 29 | 45,340 |
| Juvenile Attorney Fees | \$17,510.00 | \$34,510.00 | \$56,650.00 | \$10,901,190.88 |
| Total Juvenile Expenditures | \$17,510.00 | \$34,510.00 | \$56,650.00 | \$11,597,789.07 |
| Total Attorney Fees | \$307,257.00 | \$282,495.84 | \$224,399.24 | \$159,310,349.08 |
| Total ID Expenditures | \$318,863.00 | \$294,101.84 | \$224,399.24 | \$229,943,368.55 |
| Increase In Total Expenditures over Baseline | 122.54% | 105.26% | 56.61% | 159.20% |
| Total ID Expenditures per Population | \$14.34 | \$13.19 | \$10.46 | \$8.63 |
| Commission Formula Grant Disbursement | \$14,501.00 | \$28,871.00 | \$45,691.00 | \$36,739,158.25 |
| Commission Equalization Grant Award | \$14,841.00 | | | |

Indigent Defense Expenditure Reporting

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
- FY2014 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>

APPENDIX C – DISTRIBUTION LIST

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