



**TEXAS INDIGENT DEFENSE  
COMMISSION**

**Fiscal Monitoring Report**

**Blanco County, Texas**

**FY 2016 Indigent Defense Expenses**

**Final Report**

**September 1, 2017**

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	3
Summary of Findings.....	3
Objective .....	3
Scope.....	3
Methodology .....	3
DETAILED REPORT .....	4
BACKGROUND INFORMATION .....	4
County Background .....	4
Commission Background.....	4
Formula Grant.....	4
Discretionary Grant.....	4
33 <sup>rd</sup> /424 <sup>th</sup> District Courts .....	5
DETAILED FINDINGS AND RECOMMENDATIONS .....	6
APPENDIXES .....	9
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT .....	10
APPENDIX B – CRITERIA.....	12
APPENDIX C – DISTRIBUTION LIST.....	13

## **EXECUTIVE SUMMARY**

Blanco County's fiscal monitoring desk review began on December 9, 2016. 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, 2015 to September 30, 2016 (FY2016) was reviewed as part of the fiscal monitoring desk review process.

### **Summary of Findings**

- Attorney CLE hours are not maintained to verify attorney qualifications.
- Written explanations from judges for variance in amounts approved and amounts requested on attorney fee vouchers were not present on vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedures.
- The FY 2015 Indigent Defense Expense Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided.

### **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 FY2016. Records provided by the Blanco County auditor's office and district courts administrative office were reviewed.

### **Methodology**

To accomplish the objectives, the fiscal monitor corresponded with the County Auditor and a district court administrator. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- general ledger transactions provided by the Blanco 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
- Blanco County's local indigent defense plan.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Blanco County is located on the Edwards Plateau in Central Texas. The county seat is Johnson City, the boyhood hometown of President Lyndon B Johnson, The County is named after the Blanco River. The County serves an estimated population of 11,305. Blanco County is a political subdivision of the State of Texas. The County occupies an area of 713 square miles, of which 4.2 square miles is water. The neighboring counties are Burnet, Travis, Hays, Comal, Kendall, Gillespie and Llano.

### Commission Background

In January 2002, the 77<sup>th</sup> Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82<sup>nd</sup> 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 2016 indigent defense on-line grant application to assist in the provision of indigent defense services. Blanco County met the formula grant eligibility requirements and was awarded \$12,107 for FY 2016.

### Discretionary Grant

Blanco County did not apply for a discretionary grant for FY 2016; therefore no discretionary grant funds were reviewed.

### 33<sup>rd</sup>/424<sup>th</sup> District Courts

Blanco County is one of four counties that has two District Courts legislatively setup to operate concurrently with each other. These two courts are the 33<sup>rd</sup> and the 424<sup>th</sup> District Courts. The county auditor for Blanco County reported all felony level indigent defense cases activity only under the 424th District court on the annual indigent defense expenditure report (IDER) for FY 2016. The heading on the attorney fee voucher indicates the voucher is to include payment requests from the 33<sup>rd</sup>/424<sup>th</sup> Judicial District and County Courts but does not allow for the attorney to distinguish which district court is assigned the case in which the attorney is requesting payment. Therefore that distinction is not being made by the attorneys nor reported by the auditor. The district court administrator indicated that Judge J. Allan Garrett of the 33<sup>rd</sup> District court impaneled a grand jury for the first half of 2016 while Judge Evan Stubbs of the 424<sup>th</sup> District Court impaneled a grand jury for Blanco County for the last half of the year. It appears that both courts are indicting cases so it seems that both courts should have cases listed on the IDER. By not reporting cases in both district courts, Blanco County appears to be in violation of Government code Sec 79.036 (e) which states:

“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.”

The district court administrator noted that the Judges have filed their proposed local rules outlining this practice with the administrative judicial region and are awaiting response from the Supreme Court. This local practice is outlined for this report as it is a potential finding but we will await the response to make that determination. .

## **DETAILED FINDINGS AND RECOMMENDATIONS**

### **Finding One**

Title 1, Texas Administrative Code (TAC) rule §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, CCP may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC rule §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides an attorney is eligible if the attorney is board certified in criminal law or juvenile law, respectively.

The County could not document that attorney’s assigned criminal cases had met the CLE requirements to be eligible for appointment. The county may have made ineligible payments to these attorneys. (TAC rule §174.4 does allow for emergency appointment when no attorney meeting the CLE requirements is available)

### **Recommendation:**

The county must implement a procedure to verify that all attorneys included on the current appointment list have met the current year’s CLE requirements.

### **County Response:**

#### **Blanco County Action Plan**

*An affidavit is required from all attorneys on the District Court appointment list. This process has already been implemented as of the date of this letter. (July 20, 2017) The District Court coordinators have agreed to continue implementing this procedure. The County Court Appointed list of attorneys are the same attorneys on the District Court appointment list, and are thus covered for CLE hours. The County Court Coordinator has developed a procedure to routinely verify compliance in County Court cases.*

## **Finding Two**

The Code of Criminal Procedure (CCP) Article 26.05(c) reads in part... and “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. Thirty-one attorney fee vouchers were reviewed. Two vouchers appear to have variances in the amount requested by the attorney and the amount approved by the judge. The attorney fee vouchers for both district and county courts in Blanco County list the fee schedule for the level of offense and the disposition, therefore the attorney only needs to check the box as it pertains to the cases(s). However the two vouchers in question both requested an hourly rate and provided the judge with a detailed breakdown of the time spent on each case. The judge authorized varying amounts from the requested amounts without providing any written explanation for the variance.

### **Recommendation:**

The judges should provide written explanation for any variance in the requested amount by the attorney. The judges may consider listing an hourly rate on the fee schedule.

### **County Response:**

#### **Blanco County Action Plan**

*The County and District Judges have agreed as of the date of this letter (July 20, 2017) to be diligent in providing and attaching written explanations for variances. The County Auditor will also check for variances and request explanations before authorizing payment.*

### **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.

Blanco County prepared and submitted the FY 2016 IDER in accordance with Texas Government Code Section §79.036(e). However an error was noted in case count reporting. Thirty-one attorney fee vouchers were tested during the review. In regards to one fee voucher the attorney reported the disposition of one case but requested payment for handling multiple cases. A follow-up inquiry for this voucher revealed that the worked performed covered multiple cases. As the attorney failed to identify the multiple cases on the voucher only one case was listed on the IDER for this voucher.

Additionally, it was noted that two of the vouchers selected for review appear to be for misdemeanor cases but listed as felony cases. These vouchers were approved by the county court judge and appeared to have a numbering convention designated for the county court. The attorney requesting payment also listed them as misdemeanor cases. A third voucher indicated it was for a juvenile case. These three vouchers were listed on the general ledger for the district court. The total expenditure listed on the general ledger for the district court was indicated as adult felonies. Although the total dollar amount reported for the county is not affected, the dollar amount and case count for each court and each level of case is incorrectly reported.

### **Recommendation:**

Attorneys need to list all cases disposed on the attorney fee voucher. County personnel approving vouchers for payment should not authorize payment for multiple cases unless more than one case is listed.

Although one voucher form is used for all three courts in Blanco County, it may be helpful to provide a space on the voucher for the attorney to identify the court in which the case is filed.

### **County Response:**

#### **Blanco County Action Plan**

*The County Auditor will not send an Indigent Defense Attorney Fee Voucher to Commissioners Court for payment:*

- i. for multiple cases unless more than one case number is listed on the voucher*
- ii. unless the attorney requesting payment has clearly identified the court in which the case was filed.*



# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>BLANCO COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Population Estimate	10,479	11,622	11,305
Juvenile Assigned Counsel	\$0	\$0	\$0
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$27,519	\$46,021	\$31,299
Adult Misdemeanor Assigned Counsel	\$798	\$0	\$1,675
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$2000	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$0	\$0	\$0
Other Direct Litigation	\$0	\$0	\$0
Total Court Expenditures	\$30,317	\$46,021	\$32,974
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$4,429	\$6,644	\$4,194
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$34,746	\$52,665	\$37,168
Formula Grant Disbursement	\$13,820	\$11,510	\$12,107
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$3,522	\$5,533	\$4,476
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Assigned Counsel Cases	39	64	73

### Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

<b>Blanco County</b>				
<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Texas 2016</b>
Population (Non-Census years are estimates)	10,479	11,622	11,305	27,725,192
Felony Charges Added (from OCA report)	103	74	84	276,879
Felony Cases Paid	34	64	65	200,580
% Felony Charges Defended with Appointed Counsel	33%	86%	77%	72%
Felony Trial Court-Attorney Fees	\$27,519	\$46,021	\$31,299	\$115,192,600
Total Felony Court Expenditures	\$27,519	\$46,021	\$31,299	\$131,727,198
Misdemeanor Charges Added (from OCA report)	55	99	76	481,253
Misdemeanor Cases Paid	4	0	8	214,674
% Misdemeanor Charges Defended with Appointed Counsel	7%	0%	11%	45 %
Misdemeanor Trial Court Attorney Fees	\$798	\$0	\$1,675	\$40,245,051
Total Misdemeanor Court Expenditures	\$798	\$0	\$1,675	\$41,003,480
Juvenile Charges Added (from OCA report)	2	4	3	27,307
Juvenile Cases Paid	0	0	0	41,989
Juvenile Attorney Fees	\$0	\$0	\$0	\$11,119,664
Total Juvenile Expenditures	\$0	\$0	\$0	\$11,424,425
Total Attorney Fees	\$30,317	\$46,021	\$32,974	\$172,232,454
Total ID Expenditures	\$34,746	\$52,665	\$37,168	\$247,730,647
Increase In Total Expenditures over Baseline	238%	413%	262%	179%
Total ID Expenditures per Population	\$3.32	\$4.53	\$3.29	\$8.94
Commission Formula Grant Disbursement	\$13,820	\$11,510	\$12,107	\$25,056,873
Cost Recouped from Defendants	\$3,522	\$5,533	\$4,476	\$11,055,035

**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
- FY2016 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/48321/fy16-ider-manual.pdf>

## **APPENDIX C – DISTRIBUTION LIST**

Honorable Brett Bray  
Blanco County Judge  
P.O. Box 387  
Johnson City, TX 78636

Honorable J. Allen Garrett  
33rd District Court Judge  
1701 E. Polk St.  
Burnet, TX 78611

Ms. Cindy Lent  
County Auditor  
P.O. Box 387  
Johnson City, TX 78636

Mr. James D. Bethke  
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