



**TEXAS INDIGENT DEFENSE
COMMISSION**

Fiscal Monitoring Report

McLennan County, Texas

FY 2016 Indigent Defense Expenses

Final Report

August 1, 2017

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EXECUTIVE SUMMARY

McLennan County's on-site fiscal monitoring visit was conducted February 1-3, 2017. Follow-up email exchanges continued to March 6, 2017 to complete record review. 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 during the fiscal monitoring visit and for the subsequent follow up documents.

Summary of Findings

- General court expenditures were included with the criminal indigent defense expenses in the FY 2015 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e).
- 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.
- One voucher from the seventy-three vouchers reviewed indicated a payment to an attorney that did not appear to be made in accordance with the published fee schedule as required by Article 26.05 of Texas Code of Criminal Procedures.

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 McLennan County Auditor's Office and Indigent Defense Office were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor met with the County Auditor, Assistant County Auditors, Indigent Defense coordinator and Juvenile court administrator. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- accounts payable ledger transactions provided by the McLennan 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

McLennan County is located on the Edwards Plateau in Central Texas. The county is part of the Waco Metropolitan Statistical Area and the County seat is Waco. The County serves an estimated population of 252,626. McLennan County is a political subdivision of the State of Texas. The County occupies an area of 1,060 square miles, of which 23 square miles is water. The neighboring counties are Bell, Bosque, Coryell, Falls, Hill and Limestone.

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 2016 indigent defense on-line grant application to assist in the provision of indigent defense services. McLennan County met the formula grant eligibility requirements and was awarded \$273,512 for FY 2016.

Discretionary Grant

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

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

McLennan County included some general court expenditures with the criminal indigent defense expenses in the FY 2016 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e). Twenty-eight (28) invoices from the expert witness, investigation and other direct litigation expense categories were reviewed. Twelve of these invoices were related to Investigation Expense. One invoice was for an Expert Witness in a Post-conviction Capital Writs case.

The remaining fifteen invoices were related to psychological/mental health evaluations. 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 requested by the defense attorney for exclusive use of the results by the defense team should be documented in order to include the expenses on the IDER.

McLennan County makes use of an Investigator and Expert Witness Requisition form. This form provides all the information the auditor's office needs to complete indigent defense reporting. It also permits the vendor to be paid directly while providing the attorney's signature to show the attorney requested the services provided by the vendor.

Four of the invoices related to psychological/mental health evaluations were for juvenile respondents. Three of these evaluation invoices were submitted with a Requisition for Purchase form. Each was addressed directly to the judge and none had a motion requesting the evaluation from the defense attorney. The fourth invoice was submitted with the "Investigator and Expert Witness Requisition" signed by the attorney and an order for the psychological examination was attached. However, this order directed that the report be submitted to the court.

Three of the remaining eleven invoices were submitted with the Investigator and Expert Witness Requisition signed by the attorney. Of these three, one indicated the purpose of exam was for mitigation. Another order indicated that the request was for a second exam to prepare a sanity defense and the third invoice had an order attached that served a dual purpose, both competency to stand trial and sanity. The court was to receive the report on defendant's competency to stand trial and defendant counsel a report on the defendant's sanity.

The remaining eight invoices appear to all be for competency to stand trial. Two of these were submitted with the Investigator and Expert Witness Requisition signed by the attorney however the order attached indicated it was for competency to stand trial. Another three were submitted with the "Investigator and Expert Witness Requisition" but not signed by the defense attorney for support that the expense was requested for defense nor were any orders attached and all three were billed directly to the court. The remaining three were submitted with a Requisition for Purchase and no attorney support or any order attached.

- General court expenditures 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 general court costs. This could mean that the FY 2016 formula grant for McLennan 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/48321/fy16-ider-manual.pdf>

Recommendation:

Procedures to identify and record expenses for psychological evaluations requested by the appointed defense counsel for the exclusive use of defense counsel in preparation of a defense should be developed.

County Response:

McLennan County Action Plan

Court personnel will be instructed to more carefully monitor expense reports to insure compliance with the terms of the grant.

Contact person(s): *Ralph T Strother*

Completion date: *July 31, 2017*

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.” Seventy-four attorney fee vouchers were reviewed. Nine of these vouchers were for juvenile cases. The remaining sixty-five vouchers pertained to the District and County Courts at Law courts which all utilize the same court appointed attorney requisition form. It appears that two of the sixty-five vouchers were paid a different amount than that requested by the attorney.

The first voucher listed \$100 to be paid for the initial interview fee and then also listed the flat fee of \$300 for a plea deal. However, an additional case was listed but no additional amount was requested by the attorney. The judge authorized \$600 to be paid which was in line with the fee schedule however no written explanation for the variance was provided.

The second voucher listed \$100 to be paid for the initial interview and then had an unknown amount blacked out with a handwritten amount of \$300 written in. This voucher also had an

additional case. The judge authorized \$400 to be paid. With the additional case listed the \$400 is not supported by the fee schedule and there is no written explanation for the variance provided.

The fee schedule outlines the amount the attorneys should request based on the number of additional cases and type of disposition. It appears that attorneys request the amount for additional cases in either of two ways. One way is for the attorney to calculate the sum of all the cases and list that sum in the Flat Fee Claimed box on the requisition. The other way is for the attorney to request the amount for the highest-level offense in the Flat Fee Claimed box and then complete each line for the additional case information by adding the requested amount for each case at the end of the line. However, there is no space designated in the section for additional cases to request an amount. Therefore, if the attorney is listing additional cases but not listing the additional fee for those cases it becomes incumbent on the judge to add those fees. If the judge adds those fees to his authorized payment, the judge should provide a written explanation in the designated area of the Attorney Fee Requisition form.

Recommendation:

The County should redesign the form or educate the attorneys to complete the form in a manner in which the attorney requests the full amount to be paid and in conformity with the fee schedule.

The judges should provide written explanation for any variance in the requested amount by the attorney.

County Response:

McLennan County Action Plan

The form will be redesigned to reflect this recommendation, and judges will provide written explanations for any variance.

Contact person(s): *Ralph T. Strother*

Completion date: *July 31, 2017*

Finding Three

One attorney fee vouchers out of the sixty-five (65) vouchers reviewed did not appear to be made in accordance with the published fee schedule as required by CCP Article 26.05(b). One voucher was paid a flat rate of \$300 when the case had been dismissed at or following a final announcement docket call, which is listed as \$225. As the majority of the misdemeanor cases pay a flat fee of \$300 it seems this voucher was approved and authorized in error.

Recommendation:

As the amount on the voucher in question was requested, approved and authorized for an amount not supported by the published fee schedule, the courts and County should review the processes in place and determine if additional procedures should be developed to verify variances when attorneys request payment amounts that are not in compliance with the fee schedules.

The judges should review the fee schedules and take formal action, if necessary, to adopt a new fee schedule that outlines its current payment practices in accordance with the requirements of CCP Article 26.05(b).

County Response:

McLennan County Action Plan

The judges will review the fee schedule and take any formal action required to comply with CCP Article 26.05(b).

Contact person(s): *Ralph T. Strother*

Completion date: *July 31, 2017*

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

MCLENNAN COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2014	2015	2016
Population Estimate	243,181	246,592	252,626
Juvenile Assigned Counsel	\$166,851	\$164,368	\$127,437
Capital Murder	\$190,377	\$97,106	\$39,419
Adult Non-Capital Felony Assigned Counsel	\$1,276,890	\$1,474,696	\$1,671,449
Adult Misdemeanor Assigned Counsel	\$1,116,446	\$1,097,094	\$1,152,627
Juvenile Appeals	\$0.00	\$830	\$2,890
Adult Felony Appeals	\$120,664	\$143,656	\$106,018
Adult Misdemeanor Appeals	\$2,396	\$2,875	\$2,975
Licensed Investigation	\$128,520	\$110,242	\$144,340
Expert Witness	\$223,780	\$188,721	\$197,080
Other Direct Litigation	\$20,350	\$11,000	\$10,100
Total Court Expenditures	\$3,246,273	\$3,290,590	\$3,454,334
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$0.00	\$0.00	\$0.00
Total Public Defender Expenditures	\$0.00	\$0.00	\$0.00
Total Court and Administrative Expenditures	\$3,246,273	\$3,290,590	\$3,454,334
Formula Grant Disbursement	\$471,739	\$278,441	\$273,512
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$303,115	\$290,549	\$281,670
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	5,842	5,867	6,035

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

McLennan County				
Year	2014	2015	2016	Texas 2016
Population (Non-Census years are estimates)	243,181	246,5927	252,626	27,725,192
Felony Charges Added (from OCA report)	2,897	3,079	2,554	276,879
Felony Cases Paid	2,137	2,305	2,517	200,580
% Felony Charges Defended with Appointed Counsel	74%	75%	99%	72%
Felony Trial Court-Attorney Fees	\$1,467,267	\$1,571,803	\$1,710,868	\$115,192,600
Total Felony Court Expenditures	\$1,810,431	\$1,847,671	\$1,983,536	\$131,727,198
Misdemeanor Charges Added (from OCA report)	5,741	5,353	4,338	481,253
Misdemeanor Cases Paid	2,972	2,900	2,992	214,674
% Misdemeanor Charges Defended with Appointed Counsel	52%	54%	69%	45 %
Misdemeanor Trial Court Attorney Fees	\$1,116,446	\$1,097,094	\$1,152,627	\$40,245,051
Total Misdemeanor Court Expenditures	\$1,133,260	\$1,128,880	\$1,185,954	\$41,003,480
Juvenile Charges Added (from OCA report)	420	396	370	27,307
Juvenile Cases Paid	659	611	473	41,989
Juvenile Attorney Fees	\$166,851	\$164,368	\$127,437	\$11,119,664
Total Juvenile Expenditures	\$179,522	\$166,678	\$133,037	\$11,424,425
Total Attorney Fees	\$2,873,624	\$2,980,626	\$3,102,814	\$172,232,454
Total ID Expenditures	\$3,246,273	\$3,290,590	\$3,454,334	\$247,730,647
Increase In Total Expenditures over Baseline	163%	167%	180%	179%
Total ID Expenditures per Population	\$13.35	\$13.34	\$13.67	\$8.94
Commission Formula Grant Disbursement	\$471,739	\$278,441	\$273,512	\$25,056,873
Cost Recouped from Defendants	\$303,115	\$290,549	\$281,670	\$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 Scott M. Felton
McLennan County Judge
501 Washington Ave.
Waco, TX 76701

Honorable Ralph T. Strother
19th District Court Judge
501 Washington Ave., Ste. 303
Waco, TX 76701-1361

Honorable Mike Freeman
Local Administrative Statutory County Court Judge
501 Washington Ave., Room 209
Waco, TX 76701

Honorable Gary Coley, Jr.
Chairman of the Juvenile Board
2601 Gholson Road
Waco, TX 76704

Mr. Stan Chambers
County Auditor
214 N. 4th Street, Suite 100
Waco, TX 76701

Ms. Cathy Edwards
Indigent Defense Coordinator
501 Washington Ave., Room 109
Waco, TX 76701

Mr. James D. Bethke
Executive Director, Texas Indigent Defense Commission
209 W. 14th Street, Room 202
Austin, TX 78701

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

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