



**TEXAS INDIGENT DEFENSE
COMMISSION**

Fiscal Monitoring Report

San Saba County, Texas

FY 2016 Indigent Defense Expenses

Final Report

July 7, 2017

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EXECUTIVE SUMMARY

San Saba County's fiscal monitoring desk review began on December 5, 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 2016 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 San Saba County treasurer's office and the district courts administrative office were reviewed.

Methodology

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

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

DETAILED REPORT

BACKGROUND INFORMATION

County Background

San Saba County is located on the Edwards Plateau in western Central Texas. The county seat is the town of San Saba and is named after the San Saba River. The County serves an estimated population of 6,334. San Saba County is a political subdivision of the State of Texas. The County occupies an area of 1,138 square miles, of which 3.1 square miles is water. The neighboring counties are Mills, Lampasas, Burnet, Llano, Mason, McCulloch and Brown.

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. San Saba County met the formula grant eligibility requirements and was awarded \$9,184 for FY 2016.

Discretionary Grant

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

33rd/424th District Courts

San Saba County is one of four counties that has two District Courts legislatively set up to operate concurrently with each other. These two courts are the 33rd and the 424th District Courts. The county treasurer for San Saba County reported indigent defense activity for only the 33rd 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 33rd/424th 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 treasurer. The district court administrator indicated that Judge Evan Stubbs of the 424th District Court impaneled a grand jury for San Saba County from February 3, 2016 to July and Judge J. Allan Garrett of the 33rd District court impaneled a grand jury for the second half of the year beginning on July 13th 2016. 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, San Saba 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 could be considered a finding but we will await the response for 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 attorneys 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:

San Saba County Action Plan

An affidavit is required from all attorneys on the District Court appointment list. The County court appointment list attorneys are also on the District court appointment list, and are, thus, covered for CLE hours.

Contact person(s): *Jennifer Bunting and Lisa Bell, District Court coordinators.*

Completion date: *June 7, 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.”

Thirty attorney fee vouchers were reviewed. Six vouchers appear to have variances in the amount requested by attorney and the amount approved by judge. The attorney fee vouchers for both district and county courts in San Saba County list the fee schedule for the level of offense and the disposition, therefore the attorney only need to check the box as it pertains to the cases(s). Regarding four of the vouchers that appear to have an amount changed by the judge, the amount marked by the attorney had an X placed on the disapproved amount and the judge circled and checked the amounts he approved to pay. However, the remaining two vouchers both requested an hourly rate which is not outlined in the fee schedule. One of these vouchers detailed all the work performed but did not request an amount to be reimbursed other than to check a box to be reimbursed for 2 days in trial. The judge authorized the amounts for in court and out of court work but it was not supported by the fee schedule nor was an explanation provided. On the second voucher, the attorney listed the number of hours and the hourly rate he expected to be paid and the judge authorized another amount which was not supported by the fee schedule and no written explanation was provided.

Recommendation:

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

County Response:

San Saba County Action Plan

The County and District Judges have agreed as of date of this letter to be diligent in providing and attaching written explanations for variance. The County Treasurer will also check for variances and request explanations before payment.

Contact person(s): *Byron Theodosis, County Judge and Lois VanBeck, County Treasurer and District Judges, Allan Garrett and Evan Stubbs*

Completion date: *June 7, 2017*

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.

San Saba County prepared and submitted the FY 2016 Indigent Defense Expense Report (IDER) in accordance with Texas Government Code Section §79.036(e). However, an error was noted in case count reporting. Thirty 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 two felony cases. As the attorney failed to report both cases on the voucher only one case was listed on the IDER for this voucher.

Recommendation:

Attorneys need to list all cases disposed of for each defendant on the attorney fee voucher. County personnel approving vouchers for payment should not authorize payment for multiple cases unless multiple cases are listed.

County Response:

San Saba County Action Plan

San Saba County Treasurer's office will approve one (1) case per voucher unless multiple cases are listed. Attorneys must list all Case Numbers for multiple cases disposed. Case Number must be listed on Attorney Fee Voucher.

Contact person(s): *Lois VanBeck, County Treasurer*

Completion date: *June 7, 2017*

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

SAN SABA COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2014	2015	2016
Population Estimate	5,928	6,110	6,334
Juvenile Assigned Counsel	\$375	\$1,500	\$0
Capital Murder	\$49,133	\$0	\$9,120
Adult Non-Capital Felony Assigned Counsel	\$2,644	\$21,011	\$18,558
Adult Misdemeanor Assigned Counsel	\$775	\$1,625	\$1,950
Juvenile Appeals	\$375	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$2,200	\$0	\$0
Other Direct Litigation	\$4,626	\$1,492	\$0
Total Court Expenditures	\$60,128	\$25,628	\$29,628
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$4,952	\$7,428	\$9,351
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$65,080	\$33,056	\$38,979
Formula Grant Disbursement	\$12,112	\$11,123	\$9,184
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$2,194	\$0	\$0
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Assigned Counsel Cases	19	63	48

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

San Saba County				
Year	2014	2015	2016	Texas 2016
Population (Non-Census years are estimates)	5,928	6,110	6,334	27,725,192
Felony Charges Added (from OCA report)	73	56	49	276,879
Felony Cases Paid	12	50	34	200,580
% Felony Charges Defended with Appointed Counsel	16%	89%	69%	72%
Felony Trial Court-Attorney Fees	\$51,777	\$21,011	\$27,678	\$115,192,600
Total Felony Court Expenditures	\$58,603	\$22,503	\$27,678	\$131,727,198
Misdemeanor Charges Added (from OCA report)	115	93	110	481,253
Misdemeanor Cases Paid	5	8	14	214,674
% Misdemeanor Charges Defended with Appointed Counsel	4%	9%	13%	45 %
Misdemeanor Trial Court Attorney Fees	\$775	\$1,625	\$1,950	\$40,245,051
Total Misdemeanor Court Expenditures	\$775	\$1,625	\$1,950	\$41,003,480
Juvenile Charges Added (from OCA report)	0	1	2	27,307
Juvenile Cases Paid	2	5	0	41,989
Juvenile Attorney Fees	\$375	\$1,500	\$0	\$11,119,664
Total Juvenile Expenditures	\$375	\$1,500	\$0	\$11,424,425
Total Attorney Fees	\$53,302	\$24,136	\$29,628	\$172,232,454
Total ID Expenditures	\$65,080	\$33,056	\$38,979	\$247,730,647
Increase In Total Expenditures over Baseline	227%	66%	96%	179%
Total ID Expenditures per Population	\$10.98	\$5.41	\$6.15	\$8.94
Commission Formula Grant Disbursement	\$12,112	\$11,123	\$9,184	\$25,056,873
Cost Recouped from Defendants	\$2,194	\$0	\$0	\$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

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