



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Jefferson County, Texas

FY 2018 Indigent Defense Expenses

Final Report

August 27, 2020

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	4
APPENDICES	7
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT.....	8
APPENDIX B – CRITERIA.....	10
APPENDIX C – DISTRIBUTION LIST.....	11

EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Jefferson County on April 1-3, 2019. 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, 2017 through September 30, 2018 (FY 2018).

SUMMARY OF FINDINGS

- General court expenditures were included with the criminal indigent defense expenses in the FY 2018 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e).

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 FY2018. The records reviewed were provided by the Jefferson 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 met with two assistant county auditors and one district court administrator. The fiscal monitor reviewed

- Random samples of paid attorney fee vouchers;
- General ledger transactions provided by the Jefferson County auditor's office;
- IDER;
- Attorney fee schedule;
- Attorney contracts; and
- The County's local indigent defense plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Jefferson County was organized as a county in 1837 after Texas achieved independence as a Republic. Prior to that, it was established as a municipality of Mexico when Mexico gained independence from Spain. Jefferson County is named for President Thomas Jefferson. The county seat is Beaumont.

Jefferson County is located in the southeast portion of Texas, which is known as the plains of the Texas Gulf Coast. It is part of the Beaumont- Port Arthur, TX Metropolitan Statistical Area. It is famed for the oil gusher at Spindletop that signaled the start of the US oil industry.

Jefferson County serves an estimated population of 254,727. Jefferson County occupies an area of 1113 square miles, of which 236 square miles is water. The county is bordered by the Neches River, Pine Island Bayou, Sabine Lake and the mouth of the Sabine River while the southern part is largely marshland which reaches the Gulf of Mexico. The neighboring counties are Chambers, Hardin, Liberty and Orange Counties in Texas and Cameron Parish in Louisiana.

Jefferson County is served by the 252nd, 279th, and the 317th District courts, a Criminal District court and County courts at law 2 and 3 for criminal cases.

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 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.

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 FY 2018 indigent defense on-line grant application to assist in the provision of indigent defense services. Jefferson County met the formula grant eligibility requirements and was awarded \$192,421 for formula grant funding.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Jefferson County included some general court expenditures with the criminal indigent defense expenses in the FY 2018 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e). These general court expenses are not eligible indigent defense expenditures and should not be included in the IDER.

Twenty-three vouchers from the three categories other than attorney fees were reviewed. Of these four were for mental health evaluations. Two of the vouchers had a motion from the court ordering the evaluation to test for competency to stand trial. The remaining two did not have a separate motion available for review but the court clerk indicated that the motion was read into the record and they were ordered to test for competency. These four vouchers for competency evaluations are considered general court expenditures that are ineligible to be reported on the IDER.

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 for a mental health expert working for the defense under derivative attorney-client privilege to assist in the criminal defense of an indigent defendant must be documented to include the expenditure on the IDER. An order granting an *ex parte* defense motion requesting funds for a mental health defense expert is generally sufficient to establish eligibility as an indigent defense expenditure.

- The expenditures detailed above 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 ineligible costs. This could mean that the FY 2019 formula grant for Jefferson 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/58006/fy18-ider-manual.pdf>

Recommendation:

Procedures to identify and record expenses for mental health expert expenses requested by the appointed defense counsel for the exclusive use of defense counsel in preparation of a defense should be developed. Procedures must distinguish such expenses from examinations ordered by the court to determine competency to stand trial, which are considered general court expenses.

The County must identify and report to TIDC the amount of the mental health costs that were not for the exclusive use by the defense included in the FY 2018 IDER.

County Response:

This FY 2018 IDER reporting item was discussed in Jefferson County Auditor's Office with the County Auditor Patrick Swain, Harry Schoppe - Financial Analyst, and the TIDC fiscal monitor Debra Stewart at the end of the original monitoring review/audit.

FY 2018 IDER mental health costs reported as part of the Expert Witness totals and not allowable are as follows:

Criminal District Court: \$14,875.00

252nd District Court: \$31,345.00

County Court at Law #2: \$3,570.00

County Court at Law #3: \$2,975.00

Total Amount of unallowable mental health costs: \$ 52,765.00

Jefferson County Action Plan:

It was discussed and agreed upon that Jefferson County would not report any mental health evaluation costs on any future IDER without a properly approved and signed order from the court requested by the defendant/or defense for their use only.

Contact person(s):

Patrick Swain, Harry Schoppe

Completion Date:

The completion date was at the end of the Fiscal Monitoring audit in 2019. The FY 2019 IDER does not include any of these type of unallowable mental health costs as mentioned in Finding One.

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

JEFFERSON COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2016	2017	2018
Population Estimate	250,798	247,551	254,727
Juvenile Assigned Counsel	\$116,345	\$105,513	\$92,120
Capital Murder	\$277,475	\$405,490	\$15,638
Adult Non-Capital Felony Assigned Counsel	\$1,296,343	\$1,276,337	\$1,292,073
Adult Misdemeanor Assigned Counsel	\$169,258	\$113,813	\$86,875
Juvenile Appeals	\$0	\$1,000	\$0
Adult Felony Appeals	\$56,366	\$38,804	\$81,486
Adult Misdemeanor Appeals	\$2,985	\$1,575	\$3,675
Licensed Investigation	\$29,809	\$34,521	\$14,929
Expert Witness	\$52,672	\$40,828	\$92,153
Other Direct Litigation	\$67,647	\$187,489	\$105,727
Total Court Expenditures	\$2,068,901	\$2,205,368	\$1,784,675
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$92,443	\$0	\$0
Total Public Defender Expenditures	N/A	N/A	N/A
Total Court and Administrative Expenditures	\$2,161,343	\$2,205,368	\$1,784,675
Formula Grant Disbursement	\$211,034	\$273,067	\$192,421
Reimbursement of Attorney Fees	\$86,424	\$78,607	\$96,270
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	N/A	N/A	N/A
Total Assigned Counsel Cases	3,500	2,864	2,456

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Jefferson County

Year	2016	2017	2018	Texas 2018
Population (Non-Census years are estimates)	250,798	247,551	254,727	28,525,596
Felony Charges Added (from OCA report)	3,449	2,845	2,927	288,260
Felony Cases Paid	2,246	1,864	1,725	215,240
% Felony Charges Defended with Appointed Counsel	65%	66%	59%	75%
Felony Trial Court-Attorney Fees	\$1,573,818	\$1,681,827	\$1,307,710	\$127,990,245
Total Felony Court Expenditures	\$1,680,985	\$1,860,668	\$1,462,164	\$144,671,726
Misdemeanor Charges Added (from OCA report)	4,650	3,717	4,143	467,851
Misdemeanor Cases Paid	752	497	395	214,494
% Misdemeanor Charges Defended with Appointed Counsel	16%	13%	10%	46%
Misdemeanor Trial Court Attorney Fees	\$169,258	\$113,813	\$86,875	\$43,911,167
Total Misdemeanor Court Expenditures	\$177,925	\$120,212	\$95,822	\$44,786,546
Juvenile Charges Added (from OCA report)	240	212	152	28,970
Juvenile Cases Paid	447	452	291	41,578
Juvenile Attorney Fees	\$116,345	\$105,513	\$92,120	\$11,805,587
Total Juvenile Expenditures	\$116,345	\$105,513	\$92,187	\$12,312,690
Total Attorney Fees	\$1,918,772	\$1,942,530	\$1,571,866	\$189,152,540
Total ID Expenditures	\$2,161,343	\$2,205,368	\$1,784,675	\$276,229,545
Increase in Total Expenditures over Baseline	64%	67%	35%	211%
Total ID Expenditures per Population	\$8.62	\$8.91	\$7.01	\$9.84
Commission Formula Grant Disbursement	\$211,034	\$273,067	\$192,421	\$23,320,001
Cost Recouped from Defendants	\$86,424	\$78,607	\$96,270	\$10,281,678

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
- FY2018 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/58006/fy18-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

The Honorable Jeff R. Branick
Jefferson County Judge
1149 Pearl Street – 4th Floor
Beaumont, TX 77701
jbranick@co.jefferson.tx.us

The Hon. Kent Walston
Local Administrative District Judge
District Court
1149 Pearl Street – suite 201
Beaumont, TX 77701
kwalston@co.jefferson.tx.us

Mr. Patrick Swain
County Auditor
1149 Pearl Street – 7th Floor
Beaumont, TX 77701
pswain@co.jefferson.tx.us

Mr. Geoffrey Burkhart
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