



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Kleberg County, Texas

FY 2019 Indigent Defense Expenses

Final Report

March 22, 2021

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	5
APPENDICES	7
APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT.....	7
APPENDIX B – CRITERIA.....	9
APPENDIX C – DISTRIBUTION LIST.....	10

EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of Kleberg County beginning on April 20, 2020. Email exchanges continued until August 18, 2020. 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, 2018 through September 30, 2019 (FY 2019).

SUMMARY OF FINDINGS

- The FY 2019 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided.
- Attorney CLE hours are not maintained to verify attorney eligibility to receive appointments.

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 FY2019. The records reviewed were provided by the Kleberg 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 coordinated emails with the county auditor.

The fiscal monitor reviewed

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

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Kleberg County was organized in 1913 and is named for Robert J. Kleberg, an early settler of Texas. Kleberg served as associate commissioner and president of the Board of Land Commissioners, justice of the peace and chief justice of Austin County during the years of the Republic of Texas.

Kleberg County is part of the Kingsville, TX Micropolitan Statistical area. The County seat is Kingsville and most of the county's land is part of the King Ranch.

Kleberg County serves an estimated population of 32,580 and occupies an area of 1,090 square miles, of which 209 square miles is water. Kleberg County is bordered by the Gulf of Mexico to the east and the counties of Brooks, Jim Wells, Kenedy and, Nueces.

Kleberg County is served by the 105th District Court, a county court-at-law, and a constitutional county court.

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 2019 indigent defense online grant application to assist in the provision of indigent defense services. Kleberg County met the formula grant eligibility requirements and was awarded \$27,804.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

The amounts the County reported on the FY 2019 Indigent Defense Expenditure Report (IDER) were not supported by the financial data provided by the County. 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. Kleberg County prepared and submitted the FY 2019 IDER in accordance with Texas Government Code Section §79.036(e); however, the reported amounts were not supported by the financial data provided.

The general ledger data for attorney fee expenses includes both criminal and civil cases; therefore, the amounts on the ledger needs to be separated for the IDER reporting. In the procedures to separate the civil and criminal amounts, the auditor uses a report that provides individual attorney payment totals. The County provided individual attorney detail amounts that supported the amounts reported on the IDER, but those amounts did not support the total of the general ledger. It appears that an attorney may have more than one vendor account (one account listed by individual name and another account listed by business name), and the second account was not being considered during the IDER preparation. Upon reconciling the general ledger, it appears that the IDER included the following inaccuracies:

- For the district court, \$14,210.80 was omitted and \$2,200 was reported for the wrong attorney on the attorney detail section of the district court report.
- \$975 was omitted for the county court-at-law.

Because the amounts reported on the IDER are part of the basis for formula grant awards, the FY 2020 formula grant for Kleberg County was less than would have been authorized.

Recommendations:

The County should:

- consider documenting criminal case payments in a separate general ledger account from civil case attorney fees,
- develop procedures to verify the amounts on the individual attorney vendor reports support the total general ledger amount to confirm that all the payments are considered when preparing the IDER; and
- purge, merge, or deactivate duplicate accounts.

The County will purge, merge, or deactivate duplicate accounts. This function will be carried out by the county treasurer. The treasurer's office will review vendor accounts once every quarter.

As of October 1, 2020, the County has separated documenting the payments of the criminal and civil case attorney fees in the general ledger account. The auditor's office implemented that change and will enforce the separation of attorney case fees.

The County has developed procedures to verify the amounts on the individual attorney vendor report supports the total general ledger amount to confirm that all the payments are considered when preparing the IDER. The auditor's office developed and will enforce the procedures to ensure amounts are reported properly and support the total general ledger amount to confirm that all the payments are considered when totals are being prepared for the IDER.

Finding Two

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 that an attorney is eligible if the attorney is board certified in criminal law or juvenile law.

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.

Kleberg County Action Plan

The County has developed procedures to verify that all attorneys included on the current appointment list have met the current year's CLE requirements. The county judge's office developed and will coordinate with the other courts on the new procedures.

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

KLEBERG COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2017	2018	2019
Population Estimate	31,580	31,772	32,580
Juvenile Assigned Counsel	\$7,825	\$7,625	\$15,500
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$211,598	\$173,309	\$206,949
Adult Misdemeanor Assigned Counsel	\$90,979	\$90,595	\$116,790
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$0	\$0	\$0
Other Direct Litigation	\$10,074	\$0	\$0
Total Court Expenditures	\$320,477	\$271,529	\$339,239
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
Total Public Defender Expenditures	NA	NA	NA
Total Court and Administrative Expenditures	\$320,477	\$271,529	\$339,239
Formula Grant Disbursement	\$43,357	\$30,012	\$27,804
Reimbursement of Attorney Fees	\$30,352	\$42,531	\$51,520
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	NA	NA	NA
Total Assigned Counsel Cases	902	898	1256

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Year	2017	2018	2019	Texas 2019
Population (Non-Census years are estimates)	31,580	31,772	32,580	28,901,062
Felony Charges Added (from OCA report)	452	419	507	295,010
Felony Cases Paid	364	309	411	222,860
% Felony Charges Defended with Appointed Counsel	81%	74%	81%	76%
Felony Trial Court-Attorney Fees	\$211,598	\$173,309	\$206,949	\$143,210,108
Total Felony Court Expenditures	\$221,673	\$173,309	\$206,949	\$160,275,769
Misdemeanor Charges Added (from OCA report)	1,174	941	1,235	450,080
Misdemeanor Cases Paid	476	526	721	209,641
% Misdemeanor Charges Defended with Appointed Counsel	41%	56%	58%	47%
Misdemeanor Trial Court Attorney Fees	\$90,979	\$90,595	\$116,790	\$47,236,136
Total Misdemeanor Court Expenditures	\$90,979	\$90,595	\$116,790	\$47,954,642
Juvenile Charges Added (from OCA report)	38	51	96	27,346
Juvenile Cases Paid	62	63	124	39,709
Juvenile Attorney Fees	\$7,825	\$7,625	\$15,500	\$10,795,227
Total Juvenile Expenditures	\$7,825	\$7,625	\$15,500	\$11,236,143
Total Attorney Fees	\$310,402	\$271,529	\$339,239	\$206,610,474
Total ID Expenditures	\$320,477	\$271,529	\$339,239	\$303,021,373
Increase in Total Expenditures over Baseline	48%	25%	56%	242%
Total ID Expenditures per Population	\$10.15	\$8.55	\$10.41	\$10.48
Commission Formula Grant Disbursement	\$43,357	\$30,012	\$27,804	\$23,290,906
Cost Recouped from Defendants	\$30,352	\$42,531	\$51,520	\$9,888,967

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
- FY2019 Indigent Defense Expenditure Report Manual found at:
www.tidc.texas.gov/documents/posts/2019/october/fy2019-indigent-defense-expenditure-report-manual/

APPENDIX C – DISTRIBUTION LIST

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