



**TEXAS INDIGENT DEFENSE
COMMISSION**

Fiscal Monitoring Report

Johnson County, Texas

FY 2016 Indigent Defense Expenses

Final Report

November 2, 2017

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EXECUTIVE SUMMARY

Johnson County's on-site fiscal monitoring visit was conducted May 23-25, 2017. Follow-up email exchanges continued to June 16, 2017 to complete the 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 2016 Indigent Defense Expenditure Report (IDER) submitted under Texas Government Code Section §79.036 (e).
- Attorney fee vouchers did not contain the itemization that is needed to comply with Article 26.05(c) of the Texas Code of Criminal Procedure.
- Attorney fee vouchers were not paid based on the fee schedule provided to the Commission and published in the county's local indigent defense plan in accordance with Texas Government Code Section §79.036.
- The FY 2016 Indigent Defense Expenditure 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 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 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 Johnson 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 and Indigent Defense coordinator. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- general ledger transactions provided by the Johnson County Auditor's Office;
- IDER;
- 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

Johnson County is in north central Texas. The county is part of the Dallas-Fort Worth-Arlington Metropolitan Statistical Area and the county seat is Cleburne. The County serves an estimated population of 163,213. Johnson County is a political subdivision of the State of Texas. The County occupies an area of 734 square miles, of which 9.8 square miles is water. The neighboring counties are Bosque, Dallas, Ellis, Hill, Hood, Parker, Somervell and Tarrant.

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. Johnson County met the formula grant eligibility requirements and was awarded \$123,429 for FY 2016.

Discretionary Grant

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

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Johnson 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). Eleven invoices from the expert witness, investigation and other direct litigation expense categories were reviewed. Of these eleven vouchers, five were for mental health evaluations. Of these five vouchers, two were submitted to the court by the defense attorney with a bill attached from the mental health provider. However, the remaining three were submitted directly to the court with the description of service listed as competency evaluation.

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 in order to include the expenses 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.

One attorney fee voucher reviewed was found to be for an appointed attorney acting in the role of a special prosecutor. The expense for this voucher is not allowed to be claimed on the IDER.

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 2016 formula grant for Johnson 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 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.

Training and/or procedures to identify expenses paid for the court but not allowed to be claimed on the IDER should be undertaken by the appropriate staff that records the expenditures.

Johnson County Action Plan

Written procedures will be prepared to include the requirement that our accounts payable auditors examine the Order and applicable invoices, which include examinations to determine competency to stand trial, to verify whether it was a result of a request by the defense counsel or Order of the court.

Contact person(s): *J. R. Kirkpatrick*

Completion Date: *11/06/17*

Finding Two

Attorneys do not appear to submit fully itemized attorney fee vouchers. Fifty-two of the ninety-one attorney fee vouchers reviewed did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05 (c) because the vouchers did not include the amount requested to be paid by the attorney. CCP Article 26.05 (c) reads in part “...No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. 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”

Recommendation:

To ensure compliance of CCP Article 26.05 (c), the County should require attorneys to submit invoices that include both itemized services performed and a fee requested for those services in addition to information currently provided.

The judges must provide written explanation for any variance between the amount requested by the attorney and the amount approved for payment.

Johnson County Action Plan

New fee vouchers have been designed and are being implemented. The new voucher will provide an efficient way for the attorney to request a specific dollar amount when requesting payment under the flat fee provisions of our plan and provide a space for the attorney to request additional compensation and a place for the court to make a written finding of any deviation from the flat fee. In addition, under the plan, attorneys may submit a fee request based on an hourly rate by attaching an invoice showing time spent in 15 minute intervals with an explanation.

Contact person(s): *Judge Bosworth*

Completion Date: *As of 10/24/2017, all five judges have approved the revisions and the amended plan has been sent to the 8th Regional Administrative Judge David Evans for his approval. When he approves it, Judge Bosworth will send it to the Commission for approval. Once we submit the plan to the Commission, Johnson County will implement the plan and use the new procedures and pay sheets.*

Finding Three

CCP Article 26.04(a) requires the courts to adopt and publish written countywide procedures for providing indigent defense services, commonly known as an indigent defense plan. As part of these procedures, the judges must adopt an attorney fee schedule as required in by CCP Article 26.05(b).

The CCP Article 26.05 (b) reads: “All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioner’s court of the county.” Additionally, Texas Government Code §79.036 states the following. “ a) Not later than November 1 of each odd-numbered year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission: (1) a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the CCP, including the schedule of fees required under Article 26.05 (b) of that code;”

Ninety-one attorney fee vouchers were reviewed during the review process. The reviewer tested attorney fee voucher to see if the payments were made in accordance to the fee schedule provided to the Commission in the indigent defense plan submission. Sixteen vouchers appeared to be paid based on that fee schedule. Verbally it was shared with the fiscal monitor that the county courts at law judges were following an updated fee schedule, however this fee schedule was not available in writing. It does appear that both the juvenile courts and the district courts are also following an updated schedule, as flat fees for the various case levels were paid at higher rates. The county was not able to provide a fee schedule other than the one indicated within the indigent defense plan. The county may have made inappropriate payments.

Recommendation:

The judges should review current payment practices and outline the fee schedule to reflect those practices in accordance with the requirements of CCP Article 26.05(b). Upon completion of the review the judges should submit the fee schedule to the Commission in accordance with Texas Government Code §79.036.

A copy of the current fee schedule should be provided to the auditor’s office so that they can identify potential data entry errors.

Johnson County Action Plan

The Current indigent defense plan is being reworked to correct the deficiencies noted. The plan will be submitted by the November 1st deadline. All future compensation will be approved as provided in the amended plan.

Contact person(s): Judge Bosworth

Completion Date: *As of 10/24/2017, all five judges have approved the revisions and the amended plan has been sent to the 8th Regional Administrative Judge David Evans for his approval. When he approves it, Judge Bosworth will send it to the Commission for approval. Once we submit the plan to the Commission, Johnson County will implement the plan and use the new procedures and pay sheets.*

Finding Four

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.

Johnson County prepared and submitted the FY 2016 IDER in accordance with Texas Government Code Section §79.036(e) however, the reported amounts were not supported by the financial data provided. Specifically, the county failed to include \$26,834.45 of expenditures for the 413th District Court. This oversight understated the county's criminal indigent defense expenditures on the IDER. This could mean that the FY 2016 formula grant for Johnson County was less than would have been authorized if reported with the eligible expenses.

Recommendation:

Procedures specific to Johnson County's preparation of the annual IDER should be developed and written. The county should implement a review process as a procedure for the submission of the IDER.

Johnson County Action Plan

Procedures for preparation of the annual IDER are being developed. Within the procedure will be the requirement of a review process of the IDER prior to submission of the report.

Contact person(s): J. R. Kirkpatrick

Completion Date: 11/06/17

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

JOHNSON COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2014	2015	2016
Population Estimate	157,970	160,347	163,213
Juvenile Assigned Counsel	\$61,988	\$66,400	\$74,600
Capital Murder	\$9,230	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$610,691	\$625,412	\$599,936
Adult Misdemeanor Assigned Counsel	\$291,092	\$278,100	\$168,450
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$29,000	\$19,917	\$46,090
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$9,335	\$10,950
Expert Witness	\$18,403	\$17,237	\$6,492
Other Direct Litigation	\$124,747	\$2,924	\$60,955
Total Court Expenditures	\$1,145,152	\$1,019,326	\$967,473
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	\$1,145,152	\$1,019,326	\$967,473
Formula Grant Disbursement	\$208,602	\$127,171	\$123,429
Discretionary Disbursement			
Reimbursement of Attorney Fees	\$145,420	\$0.00	\$145,083
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	2,733	2,719	2,194

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Johnson County				
Year	2014	2015	2016	Texas 2016
Population (Non-Census years are estimates)	157,970	160,347	163,213	27,725,192
Felony Charges Added (from OCA report)	1,653	1,753	1,620	276,879
Felony Cases Paid	1,146	1,201	1,157	200,580
% Felony Charges Defended with Appointed Counsel	69%	69%	71%	72%
Felony Trial Court-Attorney Fees	\$619,921	\$625,412	\$599,936	\$115,192,600
Total Felony Court Expenditures	\$748,781	\$652,609	\$647,778	\$131,727,198
Misdemeanor Charges Added (from OCA report)	3,710	3,041	3,083	481,253
Misdemeanor Cases Paid	1,327	1,251	738	214,674
% Misdemeanor Charges Defended with Appointed Counsel	36%	41%	24%	45 %
Misdemeanor Trial Court Attorney Fees	\$291,092	\$278,100	\$168,450	\$40,245,051
Total Misdemeanor Court Expenditures	\$294,092	\$279,600	\$169,950	\$41,003,480
Juvenile Charges Added (from OCA report)	127	135	105	27,307
Juvenile Cases Paid	252	263	291	41,989
Juvenile Attorney Fees	\$61,988	\$66,400	\$74,600	\$11,119,664
Total Juvenile Expenditures	\$68,417	\$66,400	\$74,600	\$11,424,425
Total Attorney Fees	\$1,002,001	\$989,829	\$889,076	\$172,232,454
Total ID Expenditures	\$1,145,152	\$1,019,326	\$967,473	\$247,730,647
Increase In Total Expenditures over Baseline	280%	238%	221%	179%
Total ID Expenditures per Population	\$7.25	\$6.36	\$5.93	\$8.94
Commission Formula Grant Disbursement	\$208,602	\$127,171	\$123,429	\$25,056,873
Cost Recouped from Defendants	\$145,420	\$0	\$145,083	\$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 Roger Owen Harmon
Johnson Constitutional County Judge
2 N. Main Street
Cleburne, TX 76033

Honorable William C. Bosworth, Jr.
413th District Court Judge
Guinn Justice Center
204 S. Buffalo
Cleburne, TX 76033

Honorable Steven F McClure
Local Administrative Statutory County Court Judge
204 S. Buffalo
Cleburne, TX 76033

Honorable Robert Mayfield
Chairman of the Juvenile Board
204 S. Buffalo
Cleburne, TX 76033

Mr. J. R. Kirkpatrick, Jr.
County Auditor
2 N. Main Street
Cleburne, TX 76033

Ms. Cindy R. Miller
Indigent Defense Coordinator
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