



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Scurry County, Texas**

**FY2021 Indigent Defense Expenses**

**Final Report**

**April 25, 2023**

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# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Scurry County on May 23-24, 2022. Email exchanges continued until August 11, 2022. 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, 2020, through September 30, 2021 (FY2021).

## SUMMARY OF FINDINGS

- Attorney fee vouchers did not comply with Article 26.05(c).
- The FY2021 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code §79.036(e) was not prepared in the manner required.
- Scurry County uses a contract defender system with two attorneys; however, the County did not fully comply with the contract defender rules in the Texas Administrative Code (TAC), Chapter 174, Subchapter B.

## 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 FY2021. The records reviewed were provided by the Scurry 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 the county auditor and her staff.

The fiscal monitor reviewed

- Random samples of paid attorney fee vouchers;
- General ledger transactions provided by the Scurry County auditor's office;
- Indigent Defense Expenditure Report (IDER);
- Attorney fee schedule;
- Any applicable contracts; and
- The County's local indigent defense plan filed with TIDC.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Scurry County was created in 1876 and organized in 1884. The County is named after William Read Scurry, a lawyer and Confederate Army Brigadier General. Scurry was killed at the Battle of Jenkins' Ferry and is buried in the State Cemetery in Austin.

Scurry County is at the base of the Llano Estacado in West Texas. The current population is estimated at 16,556, and the county seat is Snyder. Scurry County occupies an area of 908 square miles, of which 2.1 square miles is water. The County is bordered by Borden, Fisher, Garza, Kent, and Mitchell Counties.

Scurry County is served by one district court and the 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's mission is to protect the right to counsel and improve indigent defense.

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 FY2021 indigent defense online grant application to assist in the provision of indigent defense services. Scurry County met the formula grant eligibility requirements and was awarded \$23,308 in formula grant award.

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

The payment records reviewed did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05(c), which requires itemized vouchers submitted by attorneys for the judges' approval.

The Code of Criminal Procedure (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

The payment records for the appointed attorneys appear to be court orders signed by the judge. The judge's order to pay an attorney, standing on its own, is insufficient to satisfy the requirement that a form itemizing the services performed be submitted to the judge.

### **Recommendation:**

The attorneys must submit a form itemizing the services performed and the amount billed to the judges for approval.

The form used in Scurry County could be revised so that the attorney signs the case data section, and the language for the court order could be moved below the attorney's signature with an appropriate signature line for the judge to approve the requested amount.

### **Scurry County Action Plan**

*Scurry County has updated their payment voucher forms to separate as per the suggestion made in the IDER report. The top section shows the case data information and requires the signature for the attorney for defendant below it. The bottom section has an order authorizing payment with a place for the judge presiding to sign. The voucher forms for the CPS cases will differ in that the attorney will submit a breakdown of time and fees requested signed by the attorney and the payment voucher will be attached with the presiding judge's signature authorizing payment.*

*See attachments (2) District Court Pay Order; County Court Pay Order (See Appendix B on page 12 for submitted attachment)*

**Contact person(s):** *Angela Sanchez, County Auditor*

**Completion date:** *New forms are being implemented as of 04/01/2023.*

## Finding Two

Under §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. Scurry County prepared and submitted the FY2021 Indigent Defense Expenditure Report (IDER). However, the FY2021 IDER submitted was not prepared in the manner required.

Specifically, Scurry County may have included general court expenditures with the criminal indigent defense expenses on the FY2021 IDER.

The general ledger indicated five invoices at \$1,500 each were paid for psychological evaluations. The amount reported on the IDER was for three of these vouchers. A review of the five vouchers showed that all five were billed directly to the judge. These fees appear to be for mental health evaluations to determine competency to stand trial, which are considered general court expenditures and are not eligible to be included 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. An evaluation of competency to stand trial is not an eligible indigent defense expense, regardless of which party may initiate consideration of ordering such an evaluation.

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 FY2021 formula grant for Scurry 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/8d98cc6722c9897/fy2021-ider-manual-final.pdf>

Additionally, Scurry County has two attorneys on a contract system. The dollar amounts paid to these attorneys for their contracts and the related case counts should have been reported under the contract system category on the court report section of the IDER.

## **Recommendations:**

1. The County must develop procedures to identify and record expenses for mental health experts requested by the appointed defense counsel for the exclusive use of defense counsel in preparation of a defense. Procedures must distinguish such expenses from examinations to determine competency to stand trial, which are considered general court expenses.
2. The County must identify and report to TIDC the amount of the mental health expenses that were for the exclusive use by the defense included in the FY2021 IDER.
3. The County must report contract counsel data separately from appointed counsel on the IDER and in the appropriate locations.
4. The County should develop procedures to verify the accuracy of IDER data prior to the submission of the report.

## **Scurry County Action Plan**

*After reviewing information regarding the defense expenses and how they are to be counted and accepted the County Auditor will only include expenses as reported by the Appointed Defense Attorney for future reporting, although there is still tracking of all the mental health expenses of the indigent clients for other reporting purposes.*

*County Auditor spoke with Texas IDER officials via email, and it has been determined that for future reporting to report the contract amounts for the two contracted attorneys under the Contract Counsel section of the report and since both of those attorneys also have individual appointed cases that are not covered under the contract, go ahead and report the separate cases and expenses under the Assigned Counsel section of the report. (Note: FY2021 IDER report the contract attorneys began their contract in June of 2021 and this was not previously a practice for Scurry County.)*

**Contact person(s):** *Angela Sanchez, County Auditor*

**Completion date:** *3/1/2023*

## **Finding Three**

Scurry County uses a contract defender system for two specialty courts; however, they did not fully comply with the contract defender rules outlined in the Texas Administrative Code (TAC), Title 1, Part 8, Chapter 174, Subchapter B.

Section 174.12 reads in part as follows:

The appointing authority shall solicit and select contractors in accordance with the procedures governing alternative appointment programs contained in Article 26.04, Code of Criminal Procedure.

- (1) Notification. The notification of the opportunity to apply (NOA) to be a contractor shall be distributed in a manner that reasonably covers all practicing members of the bar within the county or other region designated by the appointing authority. The notification shall inform attorneys of all requirements for submitting applications.

(2) Opportunity to Respond. All potential contractors shall have the same opportunity to respond to the NOA and be considered for the award of a contract. All potential contractors shall have at least 30 days from the issuance of the NOA to respond. The appointing authority may provide for less than 30 days to respond if a contract needs to be awarded on an emergency basis. A contract awarded on an emergency basis may not exceed 90 days in duration.

Documentation that an open notification process was used to select the attorneys was not provided.

**Recommendation:**

To comply with TAC 174 Subchapter B the County should have an open notification process for the selection of the attorneys per TAC 174.11.

**Scurry County Action Plan**

***Scurry County Action Plan: See attachments that show Scurry County did comply with TAC 175 Subchapter B.***

*The corrective plan for future if the attorneys do not continue the contract is that Scurry County will after commissioners' court approval, post in the Snyder News and on the Scurry County website as well as send letters to attorneys in the surrounding area.*

**Contact person(s):** *Dan Hicks, Jr, County Judge*

**Completion date:** *3/1/2023*



# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>SCURRY COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Population Estimate	17,129	16,556	16,556
Juvenile Assigned Counsel	\$5,100	\$2,675	\$1,775
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$36,400	\$75,100	\$110,025
Adult Misdemeanor Assigned Counsel	\$0	\$1,225	\$24,250
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$2,250	\$0	\$2,250
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$0	\$0	\$4,500
Other Direct Litigation	\$0	\$0	\$0
Total Court Expenditures	\$43,750	\$79,000	\$142,800
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$8,066	\$6,387	\$6,387
Total Public Defender Expenditures	NA	NA	NA
Total Court and Administrative Expenditures	\$51,816	\$85,387	\$149,187
Formula Grant Disbursement	\$15,205	\$21,425	\$23,308
Reimbursement of Attorney Fees	\$23,846	\$16,757	\$17,002
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	NA	NA	NA
Total Assigned Counsel Cases	82	118	230

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Scurry County</b>				
<b>Year</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>Texas 2021</b>
Population (Non-Census years are estimates)	17,129	16,556	16,556	29,149,480
Felony Charges Disposed (from OCA report)	98	154	133	233,848
Felony Cases Paid	66	108	160	179,017
% Felony Charges Defended with Appointed Counsel	67%	70%	120%	77%
Felony Trial Court-Attorney Fees	\$36,400	\$75,100	\$110,025	\$117,687,277
Total Felony Court Expenditures	\$36,400	\$75,100	\$114,525	\$129,509,185
Misdemeanor Charges Disposed (from OCA report)	271	220	329	329,309
Misdemeanor Cases Paid	0	3	64	143,702
% Misdemeanor Charges Defended with Appointed Counsel	0%	1%	19%	44%
Misdemeanor Trial Court Attorney Fees	\$0	\$1,225	\$24,250	\$36,970,435
Total Misdemeanor Court Expenditures	\$0	\$1,225	\$24,250	\$37,596,320
Juvenile Charges Added (from OCA report)	6	0	0	15,024
Juvenile Cases Paid	15	7	5	22,404
Juvenile Attorney Fees	\$5,100	\$2,675	\$1,775	\$8,221,663
Total Juvenile Expenditures	\$5,100	\$2,675	\$1,775	\$8,392,554
Total Attorney Fees	\$43,750	\$79,000	\$138,300	\$166,177,254
Total ID Expenditures	\$51,816	\$85,387	\$149,187	\$277,829,412
Increase in Total Expenditures over 2001 Baseline	70%	181%	391%	213%
Total ID Expenditures per Population	\$3.03	\$5.16	\$9.01	\$9.52
Commission Formula Grant Disbursement	\$15,205	\$21,425	\$23,308	\$21,929,443
Cost Recouped from Defendants	\$23,846	\$16,757	\$17,002	\$9,536,138

Source: Texas Indigent Defense Commission records

**APPENDIX B – SCURRY COUNTY NEW ATTORNEY FEE VOUCHER**  
**SCURRY COUNTY COURT**  
**SCURRY COUNTY, TEXAS**

**Case Data:**

Code:

1. Disposition other than trial	
a. Each guilty plea	\$ <u>375.00</u>
b. Dismissal of Filed Case	\$ <u>250.00</u>
c. Probation Revocation	\$ <u>350.00</u>
d. Modification of probation after MTR	\$ <u>200.00</u>
e. Dismissal of filed appeal	\$ <u>250.00</u>
f. Pre-trial representation where case never filed	\$ <u>200.00</u>
2. Trial or Contested Probation	
a. Per day	\$ <u>750-\$1000</u>
b. Half-day or less	\$ <u>975.00</u>
3. Appeal to Court of Appeals (through rehearing)	\$ _____
4. Capital Case – Fee set at discretion of Trial Court	\$ _____
5. Post-conviction Writ of Habeas Corpus – Fee set at discretion of Trial Court	\$ _____
6. Mental Competency Hearing – Fee set at discretion Of Trial Court	\$ _____
7. Court appointed Interpreter	\$ _____
8. Court Appointed Ad Litem (\$150 per court appearance)	\$ _____
9. Other: _____	\$ _____
10. Pursuant to Contract	_____

\_\_\_\_\_  
Attorney for Defendant

**Order Authorizing Payment:**

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2023, the Court certifies that \_\_\_\_\_ was previously appointed by the Court to represent the Defendant(s) in the below styled and numbered case(s) and it is **ORDERED** that such fee be paid out of the general fund of Scurry County.

Cause No.	The State of Texas vs.	Fees	Code No.
_____	_____	_____	_____
Approved Expenses (detail attached, if any)		_____	
		Total	_____

\_\_\_\_\_  
Judge Presiding

## APPENDIX C – CRITERIA

### Criteria

- Texas 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
- FY2021 Indigent Defense Expenditure Report Manual found at:  
<http://www.tidc.texas.gov/media/8d98cc6722c9897/fy2021-ider-manual-final.pdf>

## APPENDIX D – DISTRIBUTION LIST

The Honorable Dan R. Hicks, Jr.  
Scurry County Judge  
1806 25<sup>th</sup> Street, suite 200  
Snyder, TX 79548  
[scjudge@co.scurry.tx.us](mailto:scjudge@co.scurry.tx.us)

The Honorable Dana W. Cooley  
Local Administrative District Judge  
132nd District Court  
1806 25<sup>th</sup> St., Suite 404  
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