

TEXAS INDIGENT DEFENSE COMMISSION

Procedures for the Extraordinary Disbursement of Funds for Costs of Indigent Defense

General Information

The Texas Indigent Defense Commission (formerly the Task Force on Indigent Defense, and herein, "Commission") was created to allow the state courts system to collaborate with local courts and counties to improve indigent defense services available in the counties' courts. Pursuant to Texas Government Code §79.037, the Commission makes payments, including grants, to counties to provide indigent defense services. The following pages provide eligibility information, conditions for funding and procedure for submission to determine whether reimbursement of certain expenses is appropriate for the Commission.

"Extraordinary Disbursement" means funding to reimburse a county for actual extraordinary expenses for providing indigent defense services in a case or series of cases (Texas Administrative Code §173.102). Any county may seek reimbursement for actual expenses for providing legal services to an indigent criminal defendant or juvenile respondent in a case or series of cases resulting from an atypical event in the county. Past events that have qualified a county for extraordinary funding include capital cases with multiple defendants and natural disasters. These funds are available for direct litigation expenses only (attorney fees, investigation expenses, expert witness expenses, and other litigation expenses). A county must demonstrate that it has experienced extraordinary indigent defense expenses in the current and/or immediately preceding county fiscal year that constitute a financial emergency.

Eligibility

- Only counties may submit actual extraordinary indigent defense expenses for reimbursement.
- The county must demonstrate that its plan and procedures required by Government Code §79.036 meet the minimum criteria established by the Commission.

Conditions for Funding

- Counties must complete and submit an application form signed by the county judge.
- Counties must submit a list of actual costs including payee, itemization, amount and date that payment was made and other documentation substantiating the extraordinary expenses.
- All expenses submitted must have been paid for and the transaction(s) complete before seeking Commission reimbursement.
- The expenses must be for direct litigation costs for defense services (attorney fees, investigation expenses, expert witness expenses, and other litigation expenses).
- The maximum amount for which a county may seek reimbursement is \$100,000 per case or series of cases resulting from an extraordinary event in the county.
- Counties may only submit expenses for reimbursement that are in excess of the sum of the FY 2001 baseline expenses and the amount of the formula and equalization grant awards for the current fiscal year, if applicable.
- The Commission may consider the availability of the Regional Public Defender for Capital Cases when evaluating a County's request for extraordinary funding. If members of the Public Defender for Capital Cases request reimbursement for a capital case or cases, the County Judge must provide written documentation why the case was not eligible for representation through the public defender office or explain the reason(s) why the county had not joined the program prior to filing the current case(s) resulting in this request.

Procedure for Submission

Counties must complete an application form and provide documentation to substantiate their claim. The application will include a statement of need that explains the request for reimbursement of indigent defense costs, including any relevant information related to the financial hardship placed on the county as a result of the case(s). The Commission may consider a county's percent increase in indigent defense expenditures over baseline compared to the statewide average in the last year reported.

Counties that wish to apply for these funds may download the application from the Commission website at www.courts.state.tx.us/tidc. Once the counties have incurred the expenses, they may submit their completed application, list of expenses and other required documents to the Commission for consideration. Submission may be made electronically in the format provided by the Commission staff.

Upon receipt of the completed application the Commission grants administrator will review the information provided and contact the county if more information is needed to ascertain if the expenses are direct litigation expenses.

Approval and Payment Process

The grants administrator and director are responsible for making a recommendation to the Commission on all completed applications seeking reimbursement. A positive recommendation will include: 1) documentation that the indigent defense expenditures incurred by the county are more than the sum of the FY 2001 baseline expenses and the amount of the formula and equalization grants awarded for the current fiscal year; 2) verification that the expenses submitted are direct litigation expenses related to indigent defense; 3) verification that the plans submitted to OCA are in compliance with the minimum criteria to qualify for formula grant funds; 4) a finding that the expenses incurred by the county are extraordinary and constitute a financial emergency for the county; and 5) a finding that no other Commission programs or sources of funds were available to assist the county.

The Commission will review the requests and the staff recommendation. The discretionary review is based on: 1) the availability of funds; 2) staff recommendations; 3) the documentation that supports the overall mission of the Commission; and 4) whether the funds can be issued within the fiscal year. The director will notify the applicant within 15 days of the date the Commission approves funding to a county.

The Commission may review completed applications from counties and staff recommendations at any meeting. The Commission may choose to consider all applications received within a specified time period at the same meeting. The Commission is not obligated to reimburse any expenses to counties. The Commission will reimburse counties only if funds are available. Under no circumstances will the Commission consider reimbursing counties if doing so will jeopardize the daily operation of the Commission or limit its ability to accomplish its mission.

The director of the Commission will complete the *Authorization for County Reimbursement Form*. If approved the director will forward the form to the budget analyst assigned to the Commission for payment. The Chief Financial Officer will determine the fiscal year from which the funds will be paid. The budget analyst will submit the USAS voucher directing the Comptroller to issue the funds to the county.