



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Erath County, Texas

FY2022 Indigent Defense Expenses

Final Report

March 2025

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EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted a fiscal monitoring desk review of Erath County. The desk review began on June 8, 2023, and email exchanges and discussions continued until October 2, 2023. 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, 2021, to September 30, 2022 (FY2022).

SUMMARY OF FINDINGS

- Six attorney payments did not appear to be made in accordance with the published fee schedule as required by Article 26.05(b) of Texas Code of Criminal Procedure (CCP), and the published fee schedule does not appear to reflect the current fee schedule in use.
- Written explanations from judges for variances between amounts requested and amounts approved on attorney fee vouchers were not present on two vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedure.
- The FY2022 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code §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 payments.
- Provide recommendations pertaining to operational efficiency.
- 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 FY2022. The records reviewed were provided by the Erath County Auditor's Office. Compliance with other statutory indigent defense program requirements was not included in this review.

METHODOLOGY

The fiscal monitor worked remotely with Kay McLearn from the County Auditor's Office. The fiscal monitor reviewed:

- Random samples of paid attorney fee vouchers.
- General ledger transactions provided by the Erath County Auditor's Office.
- The Indigent Defense Expenditure Report (IDER).
- The attorney fee schedule.
- Any applicable contracts.
- The County's Indigent Defense Plan filed with TIDC.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Erath County was formed in 1856 from parts of Bosque and Coryell counties. The County seat is Stephenville, which is approximately 80 miles southwest of Dallas. The County was named in honor of George Bernard Erath, one of the original surveyors of the area and a soldier of the Texas Revolution that fought at the Battle of San Jacinto. Erath County has an estimated current population of 43,749.

Erath County is served by the 266th District Court and a county court-at-law.

Erath County uses the private assigned counsel system for indigent defense and does not participate in the Regional Public Defenders Office for Capital Cases.

Commission Background

In January 2002, the Texas Legislature established the Task Force on Indigent Defense. In 2011, the Legislature changed the name to the Texas Indigent Defense Commission (TIDC). 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 public defense.

TIDC conducts fiscal monitoring 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 FY2022 indigent defense online grant application to assist in the provision of indigent defense services. Erath County met the formula grant eligibility requirements and was awarded \$22,476 in formula grant funds for FY2023.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

TIDC examined 30 attorney fee vouchers to determine whether indigent defense payments met the requirements of Code of Criminal Procedure (CCP) Article 26.05(b) and the local fee schedule.

It is unclear if the approved payment on six (6) attorney fee vouchers were made in accordance with the fee schedule because not all of the service types were listed. Additionally, the published fees schedule included within the indigent defense plan on file in the TIDC data website was dated 2008 and was not the one in use for the review period. TIDC used the fee schedule effective October 1, 2014, for this review.

The attorney fee schedule for the county court-at-law listed flat fees for eight types of services.

The attorney fee schedule for the district court listed fixed rates for eight types of services and allowed for hourly rates to be applied if the service type is not listed or the complexity of case renders the flat fee grossly inadequate. The hourly rates identified were the rate of not less than seventy-five dollars (\$75.00) per hour and no more than one hundred dollars (\$100) per hour.

Issues Identified in County Court-at-Law Vouchers

- 1.) A final payment voucher was marked at the case level “Other” and requested a flat rate of \$250. There was a \$250 amount listed on the fee schedule for a hearing for a new trial. It is unclear if the voucher is following the fee schedule.
- 2.) On another voucher, the attorney requested a \$250 flat fee for a dismissed case for which the attorney prepared for trial. The judge approved \$150 with no explanation for the variance from the requested amount, as required by CCP Article 26.05(c). The fee schedule lists \$150 to be paid if the service was a request for new trial without a hearing and \$250 for a request for new trial with a hearing, service types that do not correspond with the services described on the voucher.
- 3.) A juvenile appeal voucher indicated that 12.25 hours were worked and that an attachment was included for support. The attachment was not made available for review, and it is unclear what amount the attorney requested, or if the voucher only detailed the number of hours. However, the judge approved \$1,000 with a note that the variance was due to the complexity of the case. The \$1,000 amount is not listed for any service type on the fee schedule for the County Court-at-Law.

Issues Identified in District Court Vouchers

- 4.) On one voucher reviewed, the attorney requested to be paid the flat fee of \$600 for a plea, but the attorney also requested an additional 10 hours at \$100 an hour to prep for court. The total amount requested on this voucher was \$1,600. The judge wrote “excessive preparation time” on the voucher but approved the \$1,600. The fee schedule does not provide for both the flat fee and an hourly rate for the same case.

- 5.) An attorney fee voucher for a murder case that ended in a plea and included a second related charge listed 60 hours worked on the case and requested to be paid \$45.83 an hour for a total of \$2,750. The attorney noted that he stopped counting hours at 60 hours. The judge approved \$1,500 without providing written findings stating “each reason for approving an amount different from the requested amount” as required by CCP Art. 26.05(c). The \$1,500 is not an amount listed on the fee schedule and the hourly rate requested was under the minimum rate of \$75.00 per hour.
- 6.) Another voucher listed two hours of in-court time and one and half hours out-of-court time. The in-court amount requested was \$600. The out-of-court amount requested was \$450, for a total request of \$1,050. The attorney appears to be requesting to be paid \$300 an hour, which exceeds the fee schedule maximum rate. As the voucher indicates that the case was settled as a plea, the \$600 in-court time could be the fixed rate on a single case settled as a plea, but the additional out-of-court time paid would not be consistent with the fee schedule. The judge approved the amount of \$1,050.

From the above vouchers, the dismissed case voucher and the voucher marked for “other” types of proceedings were both paid fees that were not listed on the fee schedule. The approval of amounts with both the flat rate and the hourly rate requested on the same case are inconsistent with the published fee schedule. When fees are adjusted based on the complexity of the case, the published hourly rates do not appear to be considered.

The following language in the fee schedule is also problematic considering current case law:

“The Court reserves the right in all cases to modify this fee schedule based on the nature or complexity of a given case....”

In 2018, the Court of Criminal Appeals held in *In re ex rel. Brian Wice v. 5th Judicial District Court of Appeals*, No. WR-86,920-02 (Texas. Crim App. Nov. 21, 2018) that a local rule authorizing the trial court to “opt out” of its own fee schedule conflicts with CCP Article 26.05. In TIDC’s *FY2019 Indigent Defense Plan Instructions*, TIDC asked judges to consider the *Wice* decision in setting the fee schedule. Following are those instructions:

*NEW Attorney Fee Schedule Information/Wice decision** Judges should also review and amend, as needed, their attorney fee schedules to comply with the Court of Criminal Appeals opinion *In re State ex rel. Wice v. Fifth Judicial Dist. Court of Appeals*, 2018 Tex. Crim. App. LEXIS 1121. The majority opinion by Judge Newell was issued on November 21, 2018.

The Court of Criminal Appeals held that a local rule authorizing the trial court to "opt out" of its own fee schedule conflicts with a statute (Article 26.05, Code of Criminal Procedure) that requires payment according to that fee schedule. The decision has implications for fee schedules across the state since many would permit payments outside of the established flat or hourly fees provided. Examples of potentially suspect language in fee schedules include provisions such as the following:

- "For good cause or exceptional circumstances, an appointed attorney may request payment at a rate above the rates specified ..., subject to review and approval by the judge presiding over the case."
- "The Court may deviate from this schedule for good cause."
- "Judge may deviate from above schedule in Judge's discretion."
- "In the interest of justice, for just cause, or in exceptional cases, the Court in its discretion may approve fees that differ from this schedule."

According to the Court's opinion in *Wice*, all portions of a fee schedule should state reasonable fixed rates or minimum and maximum hourly rates in line with Article 26.05, Code of Criminal Procedure. Judges should review their attorney fee schedules used in criminal and juvenile cases. Any fee schedules that are revised should be submitted with your indigent defense plans using the "Forms" tab.

Recommendation:

Judges should review the fee schedules and take formal action, if necessary, to adopt a new fee schedule that considers all types of cases and indigent defense services and sets the parameters to be used for variances based on case complexity that are consistent with current payment practices in accordance with the requirements of CCP Article 26.05(b) and current case law.

The current fee schedule should be included within the indigent defense plan on the TIDC data website.

County Response

The judges have reviewed and adopted an amended fee schedule in compliance with the recommendations from TIDC and CCP Article 26.05.

Erath County Action Plan

The new fee schedule shall become effective March 1, 2025

See Appendix C for new fee schedules.

Contact person(s): *The Honorable Judge Cashon*

Completion date: *March 1, 2025*

Finding Two

Written explanations from judges for variances in amounts approved and amounts requested on attorney fee vouchers were not present on two vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedure (CCP).

Article 26.05(c) of the CCP reads in part, “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.”

Thirty attorney fee vouchers were reviewed, and the judges approved the attorney requested amount on all but three vouchers. The judge approved an amount different than requested by the attorney on all three vouchers; however, no explanation for the difference was provided on two of the vouchers. Therefore, Erath County was not in compliance with CCP 26.05 (c).

Recommendation:

Judges must provide a written explanation for any variance in the amount approved and the amount requested by the attorney to comply with CCP 26.05 (c).

County Response

The judges shall provide written explanations for any variance in the amount approved and the amount requested pursuant to CCP Article 26.05.

Erath County Action Plan

The written explanations shall be included immediately.

Contact person(s): *The Honorable Judge Cashon*

Completion date: *January 28, 2025*

Finding Three

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. Erath County prepared and submitted the FY2022 Indigent Defense Expenditure Report (IDER). However, the financial data provided did not fully support the FY2022 IDER submitted.

Specifically, Erath County may have included general court expenditures with the criminal indigent defense expenses on the FY2022 IDER and classified some cases incorrectly.

The amount reported on the IDER for expert witness expenses in the district court was \$2,500. The auditor provided copies of nine invoices totaling \$6,700 from Stephen L. Mark MD. The auditor thought that this expenditure category included the vouchers that were reported on the IDER. However, the auditor was unsure which of the vouchers made up the \$2,500. All nine invoices were billed directly to the district judge. All of the invoices indicated that the doctor spent time interviewing or evaluating the defendant and preparing a report. None of the vouchers include an *ex parte* motion indicating the report was prepared exclusively for the defense. If these vouchers were for the doctor to evaluate the defendant to determine competency to stand trial, they 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 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 FY2022 formula grant for Erath County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual: <https://tidc.texas.gov/media/02ad1jlu/fy22-ider-manual-final.pdf>

Additionally, one of the 30 attorney fee vouchers selected for review indicated that the case was for a juvenile appeal in the County Court-at-Law. The attorney fees paid, and the case count were reported at the juvenile trial level, not the appeal level. Also, the 109 cases in the district court were marked as misdemeanor cases, not the felony level that the sample vouchers indicate, therefore the report was not filed in the manner required.

Recommendation:

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 and may not be included on the IDER.

County Response

The County Auditor's office has developed additional measures 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.

Erath County Action Plan -

Changes in personnel performing the recording and reporting of the attorney vouchers has recently taken place. A compliance officer has been appointed to make sure reports are accurate and timely. The compliance officer will undergo training with the TIDC within the next couple months as training opportunities present themselves.

Attorney intake forms have been updated to more clearly reflect the various types of allowable expenditures and case information. These forms are already being used by many of the attorneys, but not all. We are requesting new forms be used by all attorneys and where needed, we will provide instruction on the completion of these forms.

Clarification on any expenditures not clearly defined will be requested from the applicable party, whether that be the Judge, Attorney or other provider of services

Contact person(s): Kent Reeves/ County Auditor

Completion date: February 10, 2025

Conclusion

TIDC thanks Erath County officials and staff for their professionalism and assistance in completing this review. TIDC stands ready to assist Erath County when any questions and concerns arise in the future.

APPENDICES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

ERATH COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2020	2021	2022
Population Estimate	43,110	43,110	43,749
Juvenile Assigned Counsel	\$1,275	\$2,150	\$2,488
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$50,865	\$49,058	\$63,067
Adult Misdemeanor Assigned Counsel	\$40,265	\$35,775	\$21,474
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$1,510	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$4,533	\$6,092	\$4,950
Other Direct Litigation	\$0	\$0	\$0
Total Court Expenditures	\$98,448	\$93,075	\$91,979
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$0	\$0	\$0
Total Public Defender Expenditures	N/A	N/A	N/A
Total Court and Administrative Expenditures	\$98,448	\$93,075	\$91,979
Formula Grant Disbursement	\$37,066	\$32,194	\$30,638
Reimbursement of Attorney Fees	\$31,068	\$19,250	\$20,564
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	215	200	167

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Erath County				
Year	2020	2021	2022	Texas 2022
Population (non-census years are estimates)	43,749	43,110	43,110	29,741,214
Felony Charges Disposed (from OCA report)	208	188	185	281,347
Felony Cases Paid	104	97	0	223,839
% Felony Charges Defended with Appointed Counsel	50%	52%	0%	80%
Felony Trial Court-Attorney Fees	\$50,865	\$49,058	\$63,067	\$157,670,919
Total Felony Court Expenditures	\$55,398	\$54,500	\$65,567	\$174,347,222
Misdemeanor Charges Disposed (from OCA report)	508	585	444	375,151
Misdemeanor Cases Paid	106	97	163	180,466
% Misdemeanor Charges Defended with Appointed Counsel	21%	17%	37%	48%
Misdemeanor Trial Court Attorney Fees	\$40,265	\$35,775	\$21,474	\$46,781,394
Total Misdemeanor Court Expenditures	\$40,265	\$36,425	\$23,924	\$47,403,096
Juvenile Charges Added (from OCA report)	0	1	1	16,039
Juvenile Cases Paid	3	6	4	25,808
Juvenile Attorney Fees	\$1,275	\$2,150	\$2,488	\$8,615,991
Total Juvenile Expenditures	\$1,275	\$2,150	\$2,488	\$8,777,828
Total Attorney Fees	\$93,915	\$86,983	\$87,029	\$216,689,397
Total ID Expenditures	\$98,448	\$93,075	\$91,979	\$343,434,379
Increase in Total Expenditures over 2001 Baseline	42%	34%	32%	287%
Total ID Expenditures per Population	\$2.28	\$2.16	\$2.10	\$11.53
Commission Formula Grant Disbursement	\$37,068	\$32,194	\$30,638	\$20,342,704
Cost Recouped from Defendants	\$31,068	\$19,250	\$20,564	\$8,675,431.

Source: Texas Indigent Defense Commission records

APPENDIX B – CRITERIA

Criteria

- Uniform Grant Management Standards
- 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
- FY2022 Indigent Defense Expenditure Report Manual found at:
<https://tidc.texas.gov/media/02ad1jlu/fy22-ider-manual-final.pdf>

APPENDIX C – FEE SCHEDULES

**SECOND AMENDED
SCHEDULE OF FEES FOR
COURT APPOINTED ATTORNEYS
IN CRIMINAL CASES IN THE
266th DISTRICT COURT OF ERATH COUNTY, TEXAS**

The following schedule of fees for court appointed counsel representing indigent defendants in criminal cases in this Court is adopted effective March 1, 2025, in accordance with the provisions of Art. 26.05, Code of Criminal Procedure:

A. FIXED RATE:

<u>SERVICE</u>	<u>FEE</u>
1) Plea of guilty or nolo contendere to the Court. (multiple cases/single defendant/plea/dispose of all cases)	\$800.00 \$1200.00
2) Representation in a Motion to Revoke Probation or Motion to Adjudicate (if contested) (if based on a plea) (multiple cases)	\$700.00 \$550.00 \$800.00
3) Representation resulting in an Order of Dismissal of charge prior to plea, if based on activities of Defense Counsel. (multiple cases)	\$450.00 \$550.00
4) Trials (Jury and Non-Jury)	\$650.00 per ½ day PLUS \$100.00 per hour for trial preparation (20 hour maximum with supporting documents)
5) Appeal to the Court of Appeals (brief and oral argument)	\$1200.00 \$1500.00
6) Appeal to the Court of Criminal Appeals (if PDR granted)	\$1200.00
7) Post-conviction writ of habeas corpus proceeding	\$500.00

HOURLY RATE:

In cases involving rendition of legal services other than those listed above under "fixed rate" services, or in extraordinary or complex cases making the fixed rate schedule grossly inadequate, fees may be computed on an hourly basis for reasonable and necessary time spent by the attorney at a rate of \$100.00 per hour. The attorney requesting payment under this provision shall keep an accurate account of time expended, services rendered, and dates involved, and shall furnish documentation thereof to substantiate the reasonableness and necessity of the services rendered and time spent on the case. Approval by the Court in writing is required PRIOR TO proceeding on an hourly rate basis. The maximum amount of time spent on a case shall not exceed one hundred (100) hours. The minimum amount of time spent on a case shall not be less than two (2) hours. Death penalty cases do not have a maximum hour cap. Attorneys shall be reimbursed for reasonable and necessary expenses incurred with prior court approval, and the payment of all fees and expenses requires the approval of the Court in writing.

**SCHEDULE OF FEES FOR
COURT APPOINTED ATTORNEYS
IN CRIMINAL CASES IN THE
COUNTY COURT AT LAW OF ERATH COUNTY, TEXAS**

<u>SERVICE</u>	<u>FEE</u>
1) Plea in misdemeanor cases	\$550.00
2) Plea in more than one misdemeanor case (same respondent, same day) - each additional	\$475.00 \$200.00
3) Plea in misdemeanor case with complex issues, lengthy pretrial, voluminous. Records review or extensive investigation of facts or supported by itemized statement	\$650.00
4) Trial in misdemeanor cases (first day) (each additional day or part day thereafter)	\$1100.00 \$750.00
5) Hearing on misdemeanor revocation, habeas corpus, or MNT	\$550.00
6) Appellate brief	\$1100.00
7) Brief and oral argument	\$1300.00
8) Juvenile Proceedings (contested)	\$950.00
(plea)	\$550.00
(modification-contested)	\$700.00
(modification-uncontested)	\$550.00
(detention / compliance)	\$250.00
(deferred prosecution)	\$550.00
9) Dismissal (after case filed)	\$250.00
(untiled)	\$200.00
10) Mental Health (w/out final hearing)	\$400.00
(contested final)	\$1100.00

**SCHEDULE OF FEES FOR
COURT APPOINTED ATTORNEYS
IN CPS CASES IN THE
266th DISTRICT COURT OF ERATH COUNTY, TEXAS**

The following schedule of fees for court appointed counsel in CPS cases in this Court is adopted effective March 1, 2025.

A. FIXED RATE:

<u>SERVICE</u>	<u>FEE</u>
I) Adversary Hearing	\$425.00 (contested) \$300.00 (uncontested)
2) Each Review Hearing	\$250.00
3) Each Permanency Conference	\$200.00
4 Mediation	\$350.00
5) Final Hearing	<div>a) \$600.00 (contested) Plus \$100.00 per hour for preparation time for contested final hearing (12 hour maximum with supporting documentation)</div> <div>b) \$400.00 (uncontested)</div>

APPENDIX D – DISTRIBUTION LIST

The Honorable Brandon Huckabee
Erath County Judge
100 W. Washington
Stephenville, TX 76401
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The Honorable Jason Cashon
Local Administrative District Judge
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