

Texas Defender Service

Financial Statements
and Independent Auditors' Report
for the years ended December 31, 2022 and 2021

Texas Defender Service

Table of Contents

	Page
Independent Auditors' Report	1
Financial Statements:	
Statements of Financial Position as of December 31, 2022 and 2021	3
Statement of Activities for the year ended December 31, 2022	4
Statement of Activities for the year ended December 31, 2021	5
Statement of Functional Expenses for the year ended December 31, 2022	6
Statement of Functional Expenses for the year ended December 31, 2021	7
Statements of Cash Flows for the years ended December 31, 2022 and 2021	8
Notes to Financial Statements for the years ended December 31, 2022 and 2021	9

Independent Auditors' Report

To the Board of Directors of
Texas Defender Service:

Report on the Audit of the Financial Statements

Opinion

We have audited the financial statements of Texas Defender Service, which comprise the statements of financial position as of December 31, 2022 and 2021, and the related statements of activities, of functional expenses, and of cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of Texas Defender Service as of December 31, 2022 and 2021, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the *Auditors' Responsibilities for the Audit of the Financial Statements* section of our report. We are required to be independent of Texas Defender Service and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Texas Defender Service's ability to continue as a going concern for one year after the date that the financial statements are available to be issued.

Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and

therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Texas Defender Service's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Texas Defender Service's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Blazek & Vetterling

June 29, 2023

Texas Defender Service

Statements of Financial Position as of December 31, 2022 and 2021

	<u>2022</u>	<u>2021</u>
ASSETS		
Cash	\$ 1,661,060	\$ 1,221,841
Accounts receivable and other assets	587,655	421,614
Operating right-of-use assets <i>(Note 5)</i>	33,637	
Property and equipment, net <i>(Note 4)</i>	<u>4,392</u>	<u>452,075</u>
TOTAL ASSETS	<u>\$ 2,286,744</u>	<u>\$ 2,095,530</u>
LIABILITIES AND NET ASSETS		
Liabilities:		
Accounts payable and accrued expenses	\$ 34,638	\$ 43,055
Operating lease liability <i>(Note 5)</i>	35,680	
Refundable advance for PPP loan		193,530
Agency funds <i>(Note 6)</i>	<u>8,920</u>	<u>36,308</u>
Total liabilities	<u>79,238</u>	<u>272,893</u>
Net assets:		
Without donor restrictions <i>(Note 7)</i>	2,080,782	1,773,245
With donor restrictions <i>(Note 8)</i>	<u>126,724</u>	<u>49,392</u>
Total net assets	<u>2,207,506</u>	<u>1,822,637</u>
TOTAL LIABILITIES AND NET ASSETS	<u>\$ 2,286,744</u>	<u>\$ 2,095,530</u>

See accompanying notes to financial statements.

Texas Defender Service

Statement of Activities for the year ended December 31, 2022

	WITHOUT DONOR RESTRICTIONS	WITH DONOR RESTRICTIONS	TOTAL
REVENUE:			
Contributions	\$ 391,255	\$ 138,500	\$ 529,755
Government grants		195,465	195,465
Litigation income	358,684		358,684
Mitigation income	915,170		915,170
Special event	152,689		152,689
Cost of direct donor benefits	(36,744)		(36,744)
Gain on sale of property	171,325		171,325
Other income	<u>11,731</u>	<u> </u>	<u>11,731</u>
Total revenue	1,964,110	333,965	2,298,075
Net assets released from restrictions:			
Expenditure for program purposes	<u>256,633</u>	<u>(256,633)</u>	<u> </u>
Total	<u>2,220,743</u>	<u>77,332</u>	<u>2,298,075</u>
EXPENSES:			
Programs	1,565,654		1,565,654
Management and general	252,523		252,523
Fundraising	<u>95,029</u>		<u>95,029</u>
Total expenses	<u>1,913,206</u>		<u>1,913,206</u>
CHANGES IN NET ASSETS	307,537	77,332	384,869
Net assets, beginning of year	<u>1,773,245</u>	<u>49,392</u>	<u>1,822,637</u>
Net assets, end of year	<u>\$ 2,080,782</u>	<u>\$ 126,724</u>	<u>\$ 2,207,506</u>

See accompanying notes to financial statements.

Texas Defender Service

Statement of Activities for the year ended December 31, 2021

	WITHOUT DONOR RESTRICTIONS	WITH DONOR RESTRICTIONS	TOTAL
REVENUE:			
Contributions	\$ 293,274	\$ 130,000	\$ 423,274
Government grants		280,541	280,541
Litigation income	216,639		216,639
Mitigation income	510,218		510,218
Special event	72,000		72,000
Cost of direct donor benefits	(16,115)		(16,115)
Other income	12,710		12,710
Total revenue	1,088,726	410,541	1,499,267
Net assets released from restrictions:			
Expenditure for program purposes	361,149	(361,149)	
Total	1,449,875	49,392	1,499,267
EXPENSES:			
Programs	1,302,286		1,302,286
Management and general	239,106		239,106
Fundraising	96,531		96,531
Total expenses	1,637,923		1,637,923
CHANGES IN NET ASSETS	(188,048)	49,392	(138,656)
Net assets, beginning of year	1,961,293	0	1,961,293
Net assets, end of year	\$ 1,773,245	\$ 49,392	\$ 1,822,637

See accompanying notes to financial statements.

Texas Defender Service

Statement of Functional Expenses for the year ended December 31, 2022

	<u>PROGRAMS</u>	<u>MANAGEMENT AND GENERAL</u>	<u>FUNDRAISING</u>	<u>TOTAL</u>
Salaries	\$ 914,094	\$ 104,999	\$ 50,148	\$ 1,069,241
Employee benefits and taxes	229,140	26,319	12,571	268,030
Travel and training	137,526	15,797	7,545	160,868
Occupancy	109,131	12,536	5,986	127,653
Professional fees	17,044	80,120	935	98,099
Contract labor	63,426			63,426
Dues and subscriptions	32,042	2,656	1,269	35,967
Postage, computer, and office supplies	23,626	2,714	1,296	27,636
Telephone and internet	17,431	2,002	956	20,389
Insurance	14,515	1,668	796	16,979
Depreciation	6,697	769	368	7,834
Printing and reproduction	462	53	25	540
Maintenance and repairs	27	3	2	32
Other	<u>493</u>	<u>2,887</u>	<u>13,132</u>	<u>16,512</u>
Total expenses	<u>\$ 1,565,654</u>	<u>\$ 252,523</u>	<u>\$ 95,029</u>	1,913,206
Percent of total expenses	81.83%	13.20%	4.97%	
Cost of direct donor benefits				<u>36,744</u>
Total				<u>\$ 1,949,950</u>

See accompanying notes to financial statements.

Texas Defender Service

Statement of Functional Expenses for the year ended December 31, 2021

	<u>PROGRAMS</u>	<u>MANAGEMENT AND GENERAL</u>	<u>FUNDRAISING</u>	<u>TOTAL</u>
Salaries	\$ 769,436	\$ 106,745	\$ 49,623	\$ 925,804
Employee benefits and taxes	191,697	26,592	12,364	230,653
Travel and training	56,198	7,797	3,625	67,620
Occupancy	103,599	14,373	6,682	124,654
Professional fees	17,553	59,224	1,133	77,910
Contract labor	54,000			54,000
Dues and subscriptions	7,342	322	150	7,814
Postage, computer, and office supplies	46,028	6,386	2,968	55,382
Telephone and internet	17,616	2,444	1,136	21,196
Insurance	18,357	2,547	1,183	22,087
Depreciation	11,782	1,635	758	14,175
Printing and reproduction	6,874	953	444	8,271
Maintenance and repairs	1,184	164	76	1,424
Other	<u>620</u>	<u>9,924</u>	<u>16,389</u>	<u>26,933</u>
Total expenses	<u>\$ 1,302,286</u>	<u>\$ 239,106</u>	<u>\$ 96,531</u>	1,637,923
Percent of total expenses	79.51%	14.60%	5.89%	
Cost of direct donor benefits				<u>16,115</u>
Total				<u>\$ 1,654,038</u>

See accompanying notes to financial statements.

Texas Defender Service

Statements of Cash Flows for the years ended December 31, 2022 and 2021

	<u>2022</u>	<u>2021</u>
CASH FLOWS FROM OPERATING ACTIVITIES:		
Changes in net assets	\$ 384,869	\$ (138,656)
Adjustments to reconcile changes in net assets to net cash used by operating activities:		
Depreciation	7,834	14,175
Amortization of operating right-of-use assets	68,736	
Gain on sale of asset	(171,325)	
Changes in operating assets and liabilities:		
Accounts receivable and other assets	(166,041)	(286,491)
Accounts payable and accrued expenses	(8,417)	(10,655)
Operating lease liability	(66,693)	
Refundable advance for PPP loan	(193,530)	(83,662)
Agency funds	<u>(27,388)</u>	<u>(140,437)</u>
Net cash used by operating activities	<u>(171,955)</u>	<u>(645,726)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment		(1,481)
Disposals of property and equipment	<u>611,174</u>	<u> </u>
Net cash provided (used) by investing activities	<u>611,174</u>	<u>(1,481)</u>
NET CHANGE IN CASH	439,219	(647,207)
Cash, beginning of year	<u>1,221,841</u>	<u>1,869,048</u>
Cash, end of year	<u>\$ 1,661,060</u>	<u>\$ 1,221,841</u>

See accompanying notes to financial statements.

Texas Defender Service

Notes to Financial Statements for the years ended December 31, 2022 and 2021

NOTE 1 – ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization – Texas Defender Service (TDS) is a non-profit organization with offices in Houston and Austin. Founded in 1995, TDS provides direct representation to indigent inmates on Texas’ death row, consults with other lawyers litigating such cases, intervenes in cases where expert legal assistance is urgently needed, and engages in issue advocacy aimed at improving the Texas criminal justice system. TDS’ mission is to establish a fair and just criminal justice system in Texas. There are five aspects of TDS’ work, all of which aim to improve the fairness of the proceedings or quality of representation provided to indigent persons in Texas, as follows:

- *Trial Project* provides trial litigation, training, and consulting aimed at reducing new death sentences.
- *Post-Conviction* provides post-conviction litigation and consulting aimed at reducing new death sentences.
- *Mitigation Project* works on trial and post-conviction cases across the state on behalf of those facing death sentences and those sentenced to death.
- *Policy Advocacy* provides systemic research, advocacy, and report publication regarding Texas death penalty and criminal justice issues.
- *Capital Litigation Communication* is a comprehensive campaign designed to increase the chances for capital litigation success and erode public confidence in the death penalty.

Federal income tax status – TDS is exempt from federal income tax under §501(c)(3) of the Internal Revenue Code (the Code) and is classified as a public charity under §509(a)(1) and §170(b)(1)(A)(vi).

Cash – Bank deposits exceed the federally insured limit per depositor per institution.

Accounts receivable represent TDS’ right to consideration that is conditioned only upon the passage of time for performance obligations already satisfied. An allowance for receivables is provided when it is believed balances may not be collected in full. The amount of bad debt expense or loss on valuation of receivables recognized each period and the resulting adequacy of the allowance at the end of each period are determined using a combination of historical loss experience and analysis of individual balances. Accounts are written off after collection efforts have been exhausted and an account is deemed uncollectible.

Contributions receivable that are expected to be collected within one year are reported at net realizable value. Amounts expected to be collected in future years are discounted, if material, to estimate the present value of future cash flows. There are no contributions receivable at December 31, 2022.

Property and equipment is reported at cost if purchased and at estimated fair value at the date of gift if donated. TDS capitalizes items over \$1,000 with a useful life of more than one year. Depreciation is calculated on a straight-line basis over estimated useful lives of 3 to 40 years.

Net asset classification – Net assets, revenue, gains, and losses are classified based on the existence or absence of donor-imposed restrictions, as follows:

- *Net assets without donor restrictions* are not subject to donor-imposed restrictions even though their use may be limited in other respects such as by contract or board designation.

- *Net assets with donor restrictions* are subject to donor-imposed restrictions. Restrictions may be temporary in nature, such as those that will be met by the passage of time or use for a purpose specified by the donor, or may be perpetual in nature, where the donor stipulates that resources be maintained in perpetuity. Net assets are released from restrictions when the stipulated time has elapsed, or purpose has been fulfilled, or both.

Contributions are recognized as revenue when an unconditional commitment is received from the donor. Contributions received with donor stipulations that limit their use are classified as restricted revenue.

Litigation and mitigation income is recognized as revenue at the point in time the service is provided. There are no contract assets or liabilities arising from this revenue at December 31, 2022, 2021 or 2020. Accounts receivable was \$572,698, \$410,688 and \$135,123 at December 31, 2022, 2021 and 2020, respectively.

Special event revenue includes elements of both contributions and exchange transactions and is recognized when an event occurs. Cost of direct donor benefits represent the costs of goods and services provided to event attendees. Amounts received in advance of the event are reported as deferred revenue.

Functional allocation of expenses – Expenses are reported by their functional classification. Program services are the direct conduct or supervision of activities that fulfill the purposes for which the organization exists. Fundraising activities include the solicitation of contributions of money, securities, materials, facilities, other assets, and time. Management and general activities are not directly identifiable with specific program or fundraising activities. Expenses that are attributable to more than one activity are allocated among the activities benefitted. Salaries and related costs are allocated on the basis of estimated time and effort expended. Occupancy and depreciation costs are allocated based on square footage.

Estimates – Management must make estimates and assumptions to prepare financial statements in accordance with generally accepted accounting principles. These estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, the amounts reported as revenue and expenses, and the allocation of expenses among various functions. Actual results could vary from the estimates that were used.

NOTE 2 – ADOPTION OF NEW ACCOUNTING STANDARD

TDS adopted Accounting Standards Update (ASU) 2016-02, *Leases (Topic 842)*. Under this ASU, a lessee should recognize in the statement of financial position a lease liability and a lease asset representing its right to use the underlying asset for the term of the lease for both finance and operating leases. The ASU also requires expanded disclosures related to the amount, timing and uncertainty of cash flows arising from leases. TDS adopted the new standard effective January 1, 2022 using the modified retrospective method. Therefore, comparative information for fiscal year 2021 has not been restated and continues to be reported under Accounting Standards Codification (ASC) 840.

NOTE 3 – LIQUIDITY AND AVAILABILITY OF RESOURCES

Financial assets available for general expenditure, that is, without donor or other restrictions limiting their use within one year of December 31 comprise the following:

	<u>2022</u>	<u>2021</u>
Financial assets:		
Cash	\$ 1,661,060	\$ 1,221,841
Accounts receivable	<u>572,698</u>	<u>410,688</u>
Total financial assets	2,233,758	1,632,529
Less financial assets not available for general expenditure:		
Board-designated reserve	(732,621)	(732,621)
Agency funds	<u>(8,920)</u>	<u>(36,308)</u>
Total financial assets available for general expenditure	<u>\$ 1,492,217</u>	<u>\$ 863,600</u>

For purposes of analyzing resources available to meet general expenditures over a 12-month period, TDS considers all expenditures related to its ongoing program activities, as well as the conduct of services undertaken to support those activities, to be general expenditures.

TDS is substantially supported by litigation, mitigation, and contribution income and regularly monitors the liquidity required to meet its operating needs. TDS has a board-designated reserve which may be drawn upon, if necessary.

NOTE 4 – PROPERTY AND EQUIPMENT

Property and equipment is comprised of the following:

	<u>2022</u>	<u>2021</u>
Land		\$ 176,400
Building		389,855
Leasehold improvements	\$ 9,739	9,739
Furniture and equipment	<u>82,119</u>	<u>82,119</u>
Total property and equipment, at cost	91,858	658,113
Accumulated depreciation	<u>(87,466)</u>	<u>(206,038)</u>
Property and equipment, net	<u>\$ 4,392</u>	<u>\$ 452,075</u>

NOTE 5 – OPERATING LEASE

TDS leases office space in Austin under a non-cancelable operating lease. Right-of-use assets are recognized at the present value of the lease payments at the inception of the lease adjusted, as appropriate, for certain other payments and allowances related to obtaining the lease and placing the asset in service. Operating lease right-of-use assets are amortized so that lease costs remain constant over the lease term.

During 2022, the lease cost associated with the operating lease was \$66,786. The lease cost recognized during 2021, prior to the adoption of the new accounting standard was \$68,870. During the year ended December 31, 2022, cash paid for amounts included in the measurement of the operating lease liability was \$70,935.

As of December 31, 2022, the weighted-average remaining lease term for all operating leases is 6 months. The weighted-average discount rate associated with operating leases as of December 31, 2022 is 3.00%.

Undiscounted cash flows related to operating leases as of December 31, 2022 are as follows:

2023	\$ 35,992
Less discount to present value	<u>(312)</u>
Total present value of lease liability	<u>\$ 35,680</u>

NOTE 6 – AGENCY FUNDS

TDS holds funds in its cash accounts for the Capital Litigation Communications project. TDS has limited control over these funds and the receipts and disbursements are not reported as revenue and expenses of TDS. Balances and activities of these funds are summarized as follows:

Balance at December 31, 2020	\$ 176,745
Receipts	666,950
Disbursements	<u>(807,387)</u>
Balance at December 31, 2021	36,308
Receipts	370,068
Disbursements	<u>(397,456)</u>
Balance at December 31, 2022	<u>\$ 8,920</u>

NOTE 7 – NET ASSETS WITHOUT DONOR RESTRICTIONS

Net assets without donor restrictions are comprised of the following:

	<u>2022</u>	<u>2021</u>
Undesignated	\$ 1,343,769	\$ 588,549
Board-designated reserve	732,621	732,621
Invested in property	<u>4,392</u>	<u>452,075</u>
Total net assets without donor restrictions	<u>\$ 2,080,782</u>	<u>\$ 1,773,245</u>

NOTE 8 – NET ASSETS WITH DONOR RESTRICTIONS

Net assets with donor restrictions are restricted as follows:

	<u>2022</u>	<u>2021</u>
Subject to expenditure for specified purpose:		
Fellowship salaries	\$ 34,166	\$ 29,167
Social media and communications	13,500	
Victim Outreach Project	4,058	15,000
Trial consulting		5,225
Subject to passage of time for future operating periods	<u>75,000</u>	<u> </u>
Total net assets with donor restrictions	<u>\$ 126,724</u>	<u>\$ 49,392</u>

NOTE 9 – SUBSEQUENT EVENTS

Management has evaluated subsequent events through June 29, 2023, which is the date that the financial statements were available for issuance. As a result of this evaluation, no events were identified that are required to be disclosed or would have a material impact on reported net assets or changes in net assets.
