

COMMISSION GUIDELINES RELATED TO NON-CAPITAL CASES

Standard A County Public Defender Boards

- 09/01/94 The creation of a local public defender board is not required in counties with populations under 12,000.
- 05/12/99 A small claims court magistrate is a court employee; therefore, under I.C. 33-40-7-3, a magistrate is not eligible to be appointed to a local public defender board.

Standard B Comprehensive Plan

- 12/02/94 For non-capital cases, the Commission may determine that a county is eligible for reimbursement as of the date of approval of the plan by the Commission or eligible for reimbursement retroactively from the date the approved plan was implemented. The Commission will consider the circumstances in each situation when making its decision.
- 12/02/94 The Commission may authorize reimbursement to counties that have complied with part, but not all, of a comprehensive plan, if the counties submit a proposal for a master plan of full compliance. Claims from counties in partial compliance will be considered on an *ad hoc* basis.
- 09/04/02 **A.** For purposes of authorizing reimbursement pursuant to I.C. 33-40-6-5, “compliance with the guidelines and standards set by the commission” shall be considered by the Commission to include counties that have submitted a comprehensive plan approved by the Commission and that are, at the time of the requested reimbursement, substantially in compliance with:
1. all Commission guidelines and standards, or,
 2. the terms of a phase-in plan and all Commission guidelines and standards applicable to the terms of the phase-in plan.

Counties that qualify for reimbursement pursuant to subsection (2) above shall only be eligible for reimbursement of those indigent defense services provided under the terms of the phase-in plan. No reimbursement will be approved for those indigent defense services that are not substantially in compliance with the terms of the phase-in plan.

B. For purposes of this guideline, “phase-in plan” means a comprehensive plan that proposes compliance with Commission guidelines and standards over a period of time rather than full compliance as of the time the comprehensive plan is approved. The “phase-in plan” shall specifically describe and designate:

1. those indigent defense services or courts that will be phased-in, and,
2. the time frame in which the phase-in of specific indigent defense services or courts will be achieved, including intermediate steps toward achieving compliance.

The period of time for the phase-in of indigent defense services or courts will be established by the Commission in consultation with the applying County, but normally the phase-in period will not be permitted to exceed five years.

C. Failure of a County to abide by the terms of a “phase-in plan” may result in the disapproval of all claims for reimbursement of defense services in non-capital cases submitted by the county. A county that is found to not be in compliance with the terms of its “phase-in plan” shall be required to comply with its original time frame, as set forth in its original “phase-in plan”, or such amended “phase-in plan” as the Commission may approve, in order to regain eligibility for reimbursement.

Standard E
Appointment of Counsel

11/29/00 Experience as a judge will not be counted toward satisfying the practice requirements set forth in Standard E. Likewise, experience as stand-by counsel or a legal intern will not be counted toward satisfying the practice requirements set forth in Standard E.

Standard G
Compensation of Salaried or Contractual Public Defenders

06/08/95 As it pertains to the Chief Public Defender’s salary, the Commission defines “substantially comparable” as not less than 90% of the Prosecutor’s compensation.

07/14/98 For counties where there is no position in the prosecutor's office corresponding with a position in the public defenders' office a full-time public defender must be paid not less than \$40,100 and a part-time public defender, not less than \$20,050.

02/02/00 A county's claim for secretarial expenses is not eligible for reimbursement under the Commission's Standards when the secretarial work was performed by the attorney and not claimed as an "out-of-pocket" expense.

Standard H
Compensation of Assigned Counsel

03/08/95 For non-capital cases where the Office of the State Public Defender is appointed pursuant to I.C. 33-9-11, counsel will be compensated at a minimum rate of \$60 per hour.

Standard J
Caseloads of Counsel

12/05/01 Counsel may not handle cases on a pro bono basis to avoid caseload compliance issues.

05/04/06 New case assignments to each indigent defense attorney shall be reported by counties over a 12-month period, based on a rolling year, for purposes of substantial compliance with caseload maximums allowed by Standard J.

07/13/06 Any probation violation charge, under a Cause Number that was previously defended by a court-appointed public defender, shall not be counted as a new case. Any probation violation, under a Cause Number that was previously defended by private counsel, and a public defender is appointed by the court to defend the probation violation charge, said case shall be counted as a new case.

9/24/08 The maximum allowable caseload for appeals in a 12-month period shall be different for appeals of a guilty plea and trial appeals. The maximum allowable guilty plea appeals shall be twice the number of maximum allowable trial appeals in a 12-month period.

9/24/08 For purpose of determining compliance under Standard J, cases should be counted as follows:

1. Each cause number counts as one case regardless of the number of charges or counts.
2. Each count or charge that is severed under the trial rules counts as a separate case.
3. Separate counts or charges joined under the trial rules count as one case

Miscellaneous

05/09/96 For counties whose approved comprehensive plan includes provisions for appellate services, the Commission will reimburse those counties for the expense of appellate transcripts in capital and non-capital cases where the appellate services plans are approved.

05/14/97 The Public Defense Fund covers only criminal trials and appeals; expenses related to post-conviction proceedings are not included.

08/17/97 Overhead for misdemeanors should be calculated on the same basis as salaries and litigation expenses related to misdemeanors.

07/14/98 (*Amended Guideline*) The Commission will not reimburse counties for defense expenses incurred in CHINS and Termination of Parental Rights matters, but will reimburse counties for defense expenses in mental health matters.

08/29/01 The Commission will reimburse counties for the cost of insurance premiums (i.e. health and malpractice), but will not reimburse counties for costs associated with self-insurance programs.

02/26/03 The Commission will not reimburse counties for expenses incurred in misdemeanor cases where defendant received an enhanced sentence as a habitual offender. I.C 33-40-6-5 specifically excludes misdemeanors from reimbursement.

12/15/05 (*Amended Guideline*) To be eligible for maximum reimbursement, claims in non-capital cases must be received by the Commission not later than forty-five (45) days after the end of the calendar quarter in which they were incurred. Claims received 1 to 10 days later than 45 days after the end of the calendar quarter will be penalized 10% of the maximum eligible reimbursement. Claims received 11 to 20 days later than 45 days after

the end of the calendar quarter will be penalized 25% of the maximum eligible reimbursement. The Commission will deny all late claims received more than 65 days after the end of the calendar quarter. A "claim" as used in this guideline includes all requested financial information relating to defense expenditures, caseload information in proper spreadsheet format, attorney qualifications and verifications. Upon written request demonstrating good cause, the Commission will consider setting aside the denial of a late claim. Whether a county's quarterly claim is timely, late or denied, caseload data must be submitted for public defender offices, contract attorneys and assigned counsel.

07/13/06

The Commission authorized a new method for determining the amount of Non-Reimbursable County Expenditures for Indigent Defense:

- Counties are required to list all of their expenditures on the "Request for Reimbursement" form that has been designed.
- Counties are required to deduct from their total expenditures, the cost of salaries and overhead related to non-reimbursable misdemeanors and other non-reimbursable cases. (The amount of these Non-Reimbursable expenses must be shown on the face of the "Request for Reimbursement" form.)
- Counties are required to show in writing the method that they used to determine the amount of their non-reimbursable salaries and other expenses
- The Commission will accept a county's explanation of its non-reimbursable indigent defense expenditures unless it is patently clear that the method of computation is neither faire nor reasonable.
- The change is effective beginning with second quarter reimbursement requests for calendar year 2006.
- Counties will be afforded additional time, i.e., until August 31, 2006, in which to submit without penalty their second quarter requests for reimbursement.
- Respecting first quarter payments for 2006, Counties can accept the Commission's computation pursuant to its formula for non-reimbursable indigent defense expenditures; or, alternatively, they can submit additional information to the Commission explaining their non-reimbursable defense expenditures, and the Commission will then determine whether the county may be due a supplemental payment.

6/25/08

When the Public Defender Commission terminates all non-capital reimbursement to a county as of the end of the fiscal year, there will be no further reimbursements to that county for non-capital expenditures after June 30th of that fiscal year regardless of when the expenses were incurred.

Section 33-40-7-11(c) of the Indiana Code sets forth the action to be taken when counties in the public defense program are out of compliance:

- If a county's indigent defense services fail to meet the standards adopted by the Indiana public defender commission, the public defender commission shall notify the county public defender board and the county fiscal body of the failure to comply with the Indiana public defender commission's standards. Unless the county public defender board corrects the deficiencies to comply with the standards not more than ninety (90) days after the date of the notice, the county's eligibility for reimbursement from the public defense fund terminates at the close of that fiscal year.

[Revised 9/24/08]