

**INDIANA PUBLIC DEFENDER COMMISSION**

**March 23, 2022**

**2:00 PM**

**309 W. Washington, 5<sup>th</sup> Floor, Commission Conference Room  
Indianapolis, Indiana 46204**

**Members in attendance:**

Mark W. Rutherford, Chair (in person)  
Ms. Bernice Corley (remote)  
Ms. Samantha DeWester (in person)  
Hon. Mary Ellen Diekhoff (remote)  
Hon. Kelsey B. Hanlon (remote)  
Rep. Ragen Hatcher (remote)<sup>1</sup>  
Sen. Eric Koch (remote)  
Rep. Ryan Lauer (in person)  
Hon. Steven P. Meyer (in person)  
Sen. Gregory G. Taylor (remote)

**Audience members (all remote):**

Jim Abbs, Noble County Chief Public  
Defender and President, Chiefs  
Association  
Valerie Boots, Supervisor, Appellate  
Division, Marion County  
Ray Casanova, Marion County Public  
Defender Agency  
Gretchen Etling, Vigo County Chief  
Public Defender

**Members absent:**

Mr. David J. Hensel

**Staff in attendance:**

Derrick Mason (in person)  
Andrew Cullen (in person)  
Paula Diaz (in person)  
Andrew Falk (remote)  
Stephanie Lalani (remote)  
Torrin Liddell (remote)  
Jennifer Pinkston (remote)  
Jennifer Shircliff (remote)

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<sup>1</sup> Rep. Hatcher was in attendance for the executive session but not the general meeting.

At two o'clock, Chair Mark Rutherford called the meeting to order and introduced new Commission member Samantha DeWester. The Commission members then went directly into executive session.

At 3:08, the Chair called the public portion of the meeting to order. The Chair announced that regarding Agenda Item No. 1, "Executive Session: Take any Formal Action," the Commission would defer any action as a result of the Executive Session until Agenda Item No. 6.

The Chair asked the Commission members and the public to introduce themselves. Due to a momentary lack of quorum, the Chair elected to take certain agenda items out of order.

## **5. Financial Status of Public Defense Fund**

Mr. Mason provided the status of the Public Defense Fund, which was sufficient to pay all requests from 4Q2021.

## **11. Local Public Defender Board Appointments**

Mr. Cullen informed the Commission that there were no appointments to be made this quarter. The Commission has made appointments to every eligible board. An interim appointment may need to be made to a multi-county board.

## **12. Legislative & Policy Updates**

Mr. Cullen reminded the Commission that Sen. Sue Glick authored a bill that would, in this non-budget year, have authorized the Commission to reimburse counties for misdemeanor cases during the next budget cycle. The House Committee on Courts and Criminal Code has twice approved similar language. This year, the bill passed out of the Senate Corrections and Criminal Law Committee on a 5-4 vote. Although Commission staff had hoped the bill would be considered fiscally neutral, it was not. The bill did not receive a hearing in the Senate Appropriations Committee, due to a general stance not to approve any bills that would could impact the state budget.

Mr. Cullen further noted two other issues of interest that may have an impact on the Public Defense Fund going forward: (1) proposed legislation that would allow the appointment of counsel for children in CHINS and TPR cases, and (2) a bill that would allow appointment of counsel for kinship care providers in some cases. Commission staff have not taken a position on these bills but have monitored and talked to the advocates for these bills. The biggest concern expressed by some stakeholders was that this legislation could increase the attorney shortage the state is already facing.

In the materials presented to Commission members (and copied below), Mr. Cullen listed several areas that the Commission could choose to advance in the 2023 legislative session, including some recommended in the 2018 report by the Indiana Task Force on Public Defense. He asked Commission members for feedback between this meeting and the June meeting regarding which the Commission should prioritize.

**Possible 2023 Legislative Goals:**

- The 3 issues that were included in SB 308 (Staff has begun the process of putting together a working group of all the lawyers in the legislature to educate them on this issue prior to the 2023 session)
- Request a name change for the Commission to better reflect its duties and to separate it from the other two state PD agencies (Public Defender Council & State Public Defender)
- Increasing the reimbursement percentage for non-capital cases higher than 40%
- The creation of a centralized state appellate office
- Statewide mandatory Commission participation (we currently have 67 of 92 counties)
- State paid salaries for Chief PDs and Chief Deputies (similar to prosecutors)
- Supporting a state-run Public Defender Retirement Fund (similar to HB 1078)
- Supporting the expansion of the right to counsel for children in CHINS/TPR cases
- Strategies to impact the lawyer shortage
  - Student loan reimbursement for public sector legal service
  - Tuition assistance

Judge Meyer inquired about the reason for the opposition to the Commission's proposed misdemeanor legislation. Mr. Cullen answered that one of the articulated concerns was that it was "the largest expansion of the state government in this legislative session" and that it would "kill the private defense bar." The Task Force on Public Defense had suggested involving more private defense bar attorneys, but particularly in places such as Marion County, the trend is to become more centralized. Commission staff recognize that the attorneys in the Senate need to be better educated on these issues, so Mr. Cullen plans to schedule meetings with the attorneys in the Senate over the summer. Mr. Cullen anticipates discussing the nature and benefits of participation in the Public Defender Commission and the fiscal benefits of misdemeanor funding. Commission staff will also work to help legislators understand that as a constitutional issue, the state is ultimately responsible to provide for public defense. Senator Taylor recommended that county officials, who have strong relationships with members of the General Assembly, be recruited to approach their legislators to ask for misdemeanor funding. Judge Hanlon and Ms. Corley agreed that local officials need to become more involved in requesting that the General Assembly reimburse misdemeanor expenses.

## **2. Approval of Minutes of the December 15, 2022, Meeting**

The Chair inquired whether there were any corrections or changes to the meeting minutes from December 15, 2021. There were none. Ms. Corley moved to approve the minutes. Rep. Lauer seconded the motion. The roll was called and the motion was approved unanimously.

## **3. Approval of Amended Comprehensive Plan: Hancock County**

Mr. Mason noted that the Hancock County amended comprehensive plan incorporated the changes to Standard E with regard to the Juvenile Delinquency education and training requirements. It also established an office. The amended plan provided for a transition from solely hourly pay to the hiring of a full-time chief public defender and at least one salary public defender, with such other contract and

hourly attorneys as necessary. Mr. Mason recommended approval of the amended plan. Judge Meyer moved to approve the amended comprehensive plan. Judge Diekhoff seconded the motion. The roll was called, and the motion was approved unanimously.

**4. Approval of Amended Comprehensive Plan: Washington County**

Mr. Mason noted that Washington County was transitioning from contract attorneys to salaried attorneys. They also updated their JD education standards. There were no questions, concerns, or discussion. Judge Hanlon moved to approve the plan. Judge Meyer seconded the motion. The roll was called, and the motion was approved unanimously.

**6. Adjustment of FY 22 Internal Budget for Employee Salary Adjustments**

Judge Diekhoff moved to change Mr. Mason’s title from “Director and Chief Counsel” to “Executive Director.” Judge Hanlon seconded the motion. There was no discussion. The roll was called:

Judge Hanlon – yes

Judge Meyer – yes

Judge Diekhoff – yes

Sen. Taylor – yes

Rep. Lauer – yes

Ms. Corley – no

Ms. DeWester – yes

Sen. Koch – “with the understanding that that won’t require statutory approval, yes”

The motion carried, 7-1.

Judge Diekhoff moved to adjust Mr. Mason’s salary to \$159,950.18 such that it would be commensurate with the executive director of IPAC and other agencies, and that going forward it would be in parity with full time chief public defenders in Commission counties. Judge Meyer seconded the motion. There was no discussion.

The roll was called:

Judge Hanlon – yes

Judge Meyer – yes

Judge Diekhoff – yes

Sen. Taylor – yes

Rep. Lauer – yes

Ms. Corley – yes

Ms. DeWester – yes

Sen. Koch – “with the understanding that this brings parity to similar positions of agencies with similar size, scope, and responsibility, yes”

The motion carried, 8-0.

Judge Meyer moved to increase staff salaries by a flat increase of \$1,300 to the base salary, plus 2.5%, effective January 19, 2022, which was the same salary adjustment as every other executive branch employee. Judge Hanlon seconded the motion. The roll was called, and the motion was approved unanimously.

## **7. Status of County Compliance**

Mr. Mason informed the Commission that county caseload compliance was good (at a rate of 93%). He brought the following issues to the Commission’s attention. Blackford and Grant have a multicounty attorney out of compliance. This was the first quarter out of compliance. The attorney has notified Blackford County that he can no longer accept cases from them, so the issue should resolve soon.

Cass County had an attorney out of compliance; Mr. Mason was attempting to obtain additional information, as preliminary statements suggest the problem could be resolved in 1Q2022.

Clark and Washington also had a multicounty attorney compliance issue. This is the first quarter this issue has arisen. The attorney will likely be in compliance in 1Q2022.

Jackson County was out of compliance for the third quarter in a row. This quarter, the attorney out of compliance was further out of compliance, and a second attorney was also out of compliance. The Jackson County chief thinks that raising the compensation and the FTE of the attorneys would be helpful and was requesting a 90-day letter to assist with that request.

Scott County looked similar, with an increase in out of compliance attorneys, but they had a plan in place commencing January 1, 2022, so hopefully that plan will resolve their issues.

In Warrick and Washington counties, all the attorneys were in quarterly compliance, and the counties expect to come into compliance moving forward, particularly with the amended comprehensive plan the Commission just approved for Washington County.

Mr. Mason stated that he would recommend approval for all the counties' reimbursement requests and that a 90-day letter be sent to Jackson County for the reasons stated above.

**8. Requests for Reimbursement:**

*a. 50% Reimbursement in Death Penalty Cases*

Mr. Mason noted that for about one year, there had been no death penalty cases. Commission staff were beginning to see them again, and one was just filed in Perry County. Marion County requested reimbursement for one case, for which staff recommend approval. Clinton County also requested reimbursement for a case, for which Mr. Mason recommended partial approval, conditioned on a reduction for expenses incurred before a second attorney was appointed, as required by Commission rules. There was no discussion or questions. Judge Meyer moved to approve the death penalty reimbursements in the amount of \$31,856.67. Judge Hanlon seconded the motion. The roll was called, and the motion was approved unanimously.

**Reimbursement Requests in Capital Cases  
March 23, 2022**

COUNTY	DEFENDANT	TOTAL
Clinton	Ferrell	<b>\$25,917.75</b>
Marion	Dorsey	<b>\$5,938.92</b>
<b>TOTAL</b>		<b>\$31,856.67</b>

*b. 40% Reimbursement in Non-Capital Cases*

Mr. Mason informed the Commission that the recommended reimbursement was the largest ever made: \$8,247,288.57. The recommended reimbursement includes three adjustments:

- Hancock County requested \$8,521.59 because the county had failed to request supplemental funds for which they were eligible for the last four quarters;
- Howard County's request was reduced by \$65,424.79 because, for the first two quarters of 2021, the county incorrectly included employee (not the county's) withholdings in their requests; and
- Steuben County's request was reduced by \$858.02, also due to benefit issues (see table at end of these Minutes).

Judge Meyer asked if Mr. Mason thought the higher total amount would be a trend going forward. Mr. Mason said he expected it would, particularly as county budgets rise in the first quarter of 2022 and as the Commission and counties continue to feel the effect of inflation, the ongoing attorney shortage, and pay parity requirements. The Commission will need to discuss its budget request for 2023 at its June meeting, and it will likely need to increase its request, but the Commission will not likely need to pro-rate this or the next fiscal year.

Judge Diekhoff moved to approve the reimbursement requests and a 90-day letter to Jackson County. Ms. Corley seconded the motion. The roll was called, and the motion was approved unanimously.

**9. Reimbursement Request Form Update & Approve Roll-Out Timeline**

Mr. Mason noted that the Commission is always asked to approved changes staff have recommended to the reimbursement request forms. When the Commission approved caseload changes in December, the Commission urged staff to help prepare the counties for the changes. Thus, this year the staff made changes to the forms and were planning training in May. The significant changes include: adding attorney numbers to make it easier to check attorney compliance; including full yearly salary; and gathering data pursuant to the 2024 standards. New columns will also show each attorney's caseload compliance under 2024 standards so counties can plan for

caseload compliance. Mr. Mason requested that the Commission approve the use of the new forms to be mandatory January 1, 2023, and that the forms would be rolled out over the next three quarters.

Sen. Taylor moved to approve the forms, the three-quarter rollout, and the January 1, 2023, deadline to begin using them for submission of reimbursement request. Judge Hanlon seconded the motion. Judge Meyer commended Mr. Mason and the staff for their work on the new forms. The roll was called, and the motion was approved unanimously.

#### **10. Guideline to Standard F: Judicial Clerkships & “Criminal Litigation Experience”**

Mr. Mason stated that historically some roles (such as certified interns or judicial officers) do not qualify as experience to handle certain levels of felonies. Presently, Marion County has attorneys with clerkship experience who want to count their judicial clerkship experience as “criminal litigation” experience for purposes of Guideline F. Having considered the issue, staff recommended that appellate clerkships be given credit for criminal experience in Guideline F.

Some Commission members expressed concern that the skills are different and wondered whether the appellate training would still be required. Mr. Mason affirmed that the six-hour appellate course would still be mandatory. Judge Meyer and Judge Hanlon suggested that the word “relevant” be added to the proposed language of Guideline F. Ms. Corley moved to accept the staff recommendation to amend the Guidelines for Standard F to provide that appellate-level judicial clerkship experience does count toward the years of required criminal litigation experience in criminal litigation. Judge Hanlon seconded the motion. Adding the word “relevant” was accepted as a friendly amendment. The roll was called, and the motion was approved unanimously.

Before moving to the next agenda item, the Chair expressed his own and the condolences of the whole Commission for the passing of Sen. Taylor’s father.

The Chair further recognized the former Senator Richard Bray's invaluable service to the Commission in creating it as a legislator and his subsequent long service as a member. He has now retired. The Chair stated that he and the Commission staff had requested that the Governor award Mr. Bray a Sagamore of the Wabash for his service to the Commission, among other things. Mr. Cullen noted that he had put in a request to the Governor's Deputy Chief of Staff requesting that Mr. Bray receive the Sagamore of the Wabash, but that Mr. Cullen had not heard back. He said he would welcome any Commission members who wanted to add their names to that request.

### **13. At-Risk Youth and Family Update**

Mr. Mason noted that this topic was covered in the meeting materials, and he had nothing to add.

### **14. Staff Update**

Mr. Mason reported that Commission staff are working with the Public Defender Council to review the Standards and are working internally to review the Commentary. At the June meeting, staff will present suggested legislative priorities. Mr. Mason will work with the Chair to draft a proposed budget over the summer. Now that staff have completed trainings for nearly all the county PD boards, staff will begin doing court observations for initial hearings and considering how they are working, what barriers there are, how they could be better, and what changes, if any, staff would recommend. The Commission wants to make sure that counsel is being neither under-appointed nor over-appointed. Finally, if any of the Commission judges or other members have any recommendations for Bench Book recommendations, Mr. Mason would appreciate receiving those.

### **15. Other Matters**

Judge Meyer moved to adjourn. There were no objections. The meeting was adjourned at approximately 4:18 p.m.