

INDIANA PUBLIC DEFENDER COMMISSION

March 19, 2021

2:00 PM

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

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**Members in attendance:**

Mr. Mark Rutherford, Chair (in person)  
Mr. Richard Bray (in person)  
Ms. Bernice Corley (remote)  
Hon. Mary Ellen Diekhoff (remote)  
Hon. Kelsey Hanlon (remote)  
Mr. David J. Hensel (remote)  
Rep. Ryan Lauer (remote)

**Audience members (all remote):**

Bruce Andis, Lawrence County  
Chief Public Defender  
Ray Cassanova, Marion County  
Public Defender Agency  
Jim Abbs, Noble County  
Chief Public Defender and President  
of Indiana Chief Public Defender  
Association  
Mark Clark, Washington County  
Chief Public Defender  
Gretchen Etling, Vigo County  
Chief Public Defender  
Lisa Moody, Gibson County Chief  
Public Defender  
Greg Bowes, Public Defender

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**Staff in attendance:**

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

**Members absent:**

Hon. Steven P. Meyer  
Sen. Gregory G. Taylor  
Sen. Eric Koch  
Rep. Ryan Dvorak

At two o'clock, Chair Mark Rutherford called the meeting to order. Senior Staff Attorney Derrick Mason called roll for the Commission members and staff. Mr. Mason also announced each of the audience members present and they specified their affiliation.

Chair Mark Rutherford recognized the meeting was just at a quorum and asked if there were any objections to the Public Meeting Agenda. There were no objections. Because the meeting could lose the quorum necessary for approving disbursements, Mr. Mason asked to begin with status of county compliance, which became the first item of business with no objection.

## **1. Status of County Compliance (Agenda Item #6)**

### **A. Follow-Up: Lawrence County (90-Day) & Brown County**

Lawrence County: Mr. Mason provided the following background: The Commission sent Lawrence County a 90-day letter six months prior to this meeting. At the December 16, 2020 meeting, the Commission approved an additional 90 days for Lawrence County to reach a plan for compliance as directed by the 90-day letter. The plan was to be reviewed at this meeting.

Mr. Mason read an excerpt from the Lawrence County Council meeting Minutes held on March 9, 2021. Pursuant to the Minutes, the Council approved a motion to increase salaries for deputy public defender attorneys, a \$5,000 stipend for the chief public defender, and to hire both an investigator and a social worker. The plan would increase the Lawrence County Public Defender Agency's budget by \$103,869. Mr. Mason pointed out that the salary increases and additional staff hires should bring Lawrence County into compliance. Mr. Mason pointed out that Lawrence County is in caseload compliance this quarter and recommended full reimbursement. The 90-day letter is resolved.

Brown County: Mr. Mason explained he spoke with Brown County's Public Defender Board Chair, Ruth Johnson, regarding local law enforcement's investigation into a particular Brown County public defender's billing practices. The special prosecutor has declined to file charges. Mr. Mason maintains contact with Ms. Johnson for information regarding additional activity concerning this issue. Mr. Mason and Ms. Johnson discussed the Commission sending a letter asking the county to develop a plan that would familiarize the public defender board, county council, county auditor, and county commissioners with public defender billing practices and address how to handle issues relating to such billing practices in the future. Mr. Mason further explained this letter would not serve as a 90-day letter but would instruct the Commission on the county's plans to handle those issues in the future. Mr. Mason believes Ms. Johnson is on board with the letter and he will remain in contact with her to maintain the status of the attorney investigation.

### **B. Non-Capital Caseloads**

Mr. Mason reports there are some multi-county attorneys out of compliance, but most of the affected counties have a plan to come into compliance that will start at the beginning of next year. Mr. Mason is optimistic that most of these issues will be resolved during the first couple of quarters in 2021. Regarding counties that are out of compliance, Mr. Mason reports that Elkhart County's reimbursement is being reduced until July 1, 2021

for the chief’s salary and benefits because they are out of compliance with our standards. Elkhart County has hired additional attorneys, so Mr. Mason hopes their compliance issues will be rectified during the first couple quarters of 2021. Mr. Mason does not anticipate any additional needs from Elkhart County. Mr. Mason noted the following counties that each have one attorney out of compliance but no significant accompanying issues: Grant, Madison, Marion, and Washington. LaGrange County had compliance issues after a firm dropped its public defense contract last quarter and the county had to find another attorney to take up the contract. If the compliance issues continue next quarter, and the county does not have a plan in place, we may need to send a 90-day letter. Commission staff need additional data to determine whether the county’s solution is sufficient.

Chairman Rutherford invited questions or concerns regarding the above information. Regarding Lawrence County, Ms. Corley requested more specifics as to the purpose for the \$5000 stipend. Mr. Andis explained the stipend has been in the salary structure for a long time and was addressed with the original chief public defender. Mr. Andis thought the stipend had been discontinued but the Lawrence County Council agreed to put it back into the budget to get the chief public defender’s salary in parity with the prosecutor. Regarding Brown County, Ms. Corley thanked Mr. Mason for talking with Ms. Johnson and providing the status report. Ms. Corley explained that she finds what happened in Brown County very unsettling and she would like more discussion among the Commission to determine the best way to move forward. Ms. Corley wants to understand how the situation came about and acknowledged Mr. Mason’s suggestion to send the letter. Ms. Corley asked to have more discussion about the issue. Chairman Rutherford suggested putting the issue on the agenda to discuss at the June 2021 meeting. There were no further questions or concerns from the Commission members.

## 2. Requests for 40% Reimbursement in Non-Capital Cases (Agenda Item # 7)

Mr. Mason recommended reimbursement as provided in the following table:

**INDIANA PUBLIC DEFENDER COMMISSION**  
 Fourth Quarter 2020 Requests for Reimbursements in Non-Capital Cases  
 3/19/2021

County	Total Expenditure	Non-reimbursable Adjustment	% Adjusted	Eligible Expenditure	4Q2020 Reimbursement	Prior Quarter Adjustment	Total Payment
Adams	\$116,115.54	\$21,487.81	18.51%	\$94,627.73	\$37,851.09		\$ 37,851.09
Allen	\$1,226,986.65	\$87,205.27	7.11%	\$1,139,781.38	\$455,912.55		\$ 455,912.55
Benton	\$46,607.75	\$24,634.05	52.85%	\$21,973.70	\$8,789.48	\$7,041.22	\$ 15,830.70
Blackford	\$46,902.95	\$15,209.66	32.43%	\$31,693.29	\$12,677.32		\$ 12,677.32
Brown	\$58,551.43	\$14,913.32	25.47%	\$43,638.11	\$17,455.24		\$ 17,455.24
Carroll	\$49,477.50	\$17,994.35	36.37%	\$31,483.15	\$12,593.26		\$ 12,593.26
Cass	\$178,928.43	\$24,162.87	13.50%	\$154,765.56	\$61,906.23		\$ 61,906.23
Clark	\$346,530.90	\$16,730.43	4.83%	\$329,800.47	\$131,920.19		\$ 131,920.19
Clinton	\$129,493.07	\$21,994.19	16.98%	\$107,498.88	\$42,999.55	-\$256.80	\$ 42,742.75
Decatur	\$101,033.55	\$15,311.22	15.15%	\$85,722.33	\$34,288.93	-\$50.00	\$ 34,238.93
Dekalb	\$216,591.64	\$21,149.80	9.76%	\$195,441.84	\$78,176.74		\$ 78,176.74

Delaware	\$348,240.47	\$5,322.19	1.53%	\$342,918.28	\$137,167.31		\$ 137,167.31
Elkhart	\$744,132.33	\$185,536.69	24.93%	\$558,595.64	\$223,438.25		\$ 223,438.25
Fayette	\$104,593.59	\$10,783.66	10.31%	\$93,809.93	\$37,523.97		\$ 37,523.97
Floyd	\$192,840.60	\$6,276.07	3.25%	\$186,564.53	\$74,625.81		\$ 74,625.81
Fountain	\$52,789.60	\$9,449.31	17.90%	\$43,340.29	\$17,336.12		\$ 17,336.12
Fulton	\$85,295.56	\$27,612.55	32.37%	\$57,683.01	\$23,073.20		\$ 23,073.20
Gibson	\$216,915.53	\$20,119.14	9.28%	\$196,796.39	\$78,718.56		\$ 78,718.56
Grant	\$266,101.36	\$7,175.37	2.70%	\$258,925.99	\$103,570.40	-\$2,502.28	\$ 101,068.12
Greene	\$168,161.94	\$26,855.00	15.97%	\$141,306.94	\$56,522.78		\$ 56,522.78
Hancock	\$203,822.94	\$5,637.36	2.77%	\$198,185.58	\$79,274.23		\$ 79,274.23
Harrison	\$53,061.10	\$9,613.16	18.12%	\$43,447.94	\$17,379.18		\$ 17,379.18
Hendricks	\$440,624.91	\$84,560.03	19.19%	\$356,064.88	\$142,425.95		\$ 142,425.95
Howard	\$505,964.03	\$41,936.10	8.29%	\$464,027.93	\$185,611.17		\$ 185,611.17
Jackson	\$187,198.20	\$9,640.57	5.15%	\$177,557.63	\$71,023.05		\$ 71,023.05
Jasper	\$80,427.44	\$13,281.31	16.51%	\$67,146.13	\$26,858.45		\$ 26,858.45
Jay	\$124,186.01	\$13,518.64	10.89%	\$110,667.37	\$44,266.95		\$ 44,266.95
Jefferson	\$178,676.35	\$40,470.32	22.65%	\$138,206.03	\$55,282.41		\$ 55,282.41
Jennings	\$127,555.38	\$17,532.20	13.74%	\$110,023.18	\$44,009.27	-\$558.63	\$ 43,450.64
Knox	\$219,324.98	\$43,968.72	20.05%	\$175,356.26	\$70,142.50		\$ 70,142.50
Kosciusko	\$216,413.31	\$67,061.14	30.99%	\$149,352.17	\$59,740.87		\$ 59,740.87
LaGrange	\$80,799.14	\$9,629.22	11.92%	\$71,169.92	\$28,467.97		\$ 28,467.97
Lake	\$1,237,810.63	\$10,427.79	0.84%	\$1,227,382.84	\$490,953.14		\$ 490,953.14
LaPorte	\$260,924.10	\$22,836.46	8.75%	\$238,087.64	\$95,235.05		\$ 95,235.05
Lawrence	\$233,981.26	\$28,309.83	12.10%	\$205,671.43	\$82,268.57		\$ 82,268.57
Madison	\$536,794.03	\$17,346.65	3.23%	\$519,447.38	\$207,778.95		\$ 207,778.95
Marion	\$6,466,519.26	\$674,191.44	10.43%	\$5,792,327.82	\$2,316,931.13	-\$121,663.76	\$ 2,195,267.37
Martin	\$52,716.15	\$12,442.36	23.60%	\$40,273.79	\$16,109.52		\$ 16,109.52
Miami	\$177,499.17	\$16,154.00	9.10%	\$161,345.17	\$64,538.07		\$ 64,538.07
Monroe	\$629,691.54	\$128,526.78	20.41%	\$501,164.76	\$200,465.91		\$ 200,465.91
Noble	\$256,215.95	\$47,219.40	18.43%	\$208,996.55	\$83,598.62		\$ 83,598.62
Ohio	\$24,856.05	\$5,085.37	20.46%	\$19,770.68	\$7,908.27		\$ 7,908.27
Orange	\$106,835.26	\$13,856.05	12.97%	\$92,979.21	\$37,191.68		\$ 37,191.68
Owen	\$85,806.56	\$16,025.63	18.68%	\$69,780.93	\$27,912.37		\$ 27,912.37
Parke	\$39,147.18	\$12,109.11	30.93%	\$27,038.07	\$10,815.23		\$ 10,815.23
Perry	\$59,509.75	\$10,608.98	17.83%	\$48,900.77	\$19,560.31		\$ 19,560.31
Pike	\$39,053.42	\$871.50	2.23%	\$38,181.92	\$15,272.77		\$ 15,272.77
Pulaski	\$96,517.09	\$19,723.98	20.44%	\$76,793.11	\$30,717.24		\$ 30,717.24
Ripley	\$57,343.27	\$5,369.15	9.36%	\$51,974.12	\$20,789.65		\$ 20,789.65
Rush	\$107,152.84	\$16,614.70	15.51%	\$90,538.14	\$36,215.25		\$ 36,215.25
Scott	\$174,223.79	\$17,721.86	10.17%	\$156,501.93	\$62,600.77		\$ 62,600.77
Shelby	\$223,731.33	\$24,685.70	11.03%	\$199,045.63	\$79,618.25		\$ 79,618.25
Spencer	\$84,849.96	\$3,932.20	4.63%	\$80,917.76	\$32,367.10		\$ 32,367.10
Steuben	\$106,633.34	\$25,546.01	23.96%	\$81,087.33	\$32,434.93		\$ 32,434.93
St. Joseph	\$661,747.32	\$65,879.07	9.96%	\$595,868.25	\$238,347.30		\$ 238,347.30
Sullivan	\$81,682.63	\$23,623.92	28.92%	\$58,058.71	\$23,223.48		\$ 23,223.48
Switzerland	\$72,026.75	\$15,224.83	21.14%	\$56,801.92	\$22,720.77		\$ 22,720.77
Tippecanoe	\$1,117,939.29	\$157,950.69	14.13%	\$959,988.60	\$383,995.44		\$ 383,995.44
Union	\$26,370.00	\$1,731.08	6.56%	\$24,638.92	\$9,855.57		\$ 9,855.57
Vanderburgh	\$834,792.10	\$53,831.89	6.45%	\$780,960.21	\$312,384.08		\$ 312,384.08
Vermillion	\$74,290.86	\$9,355.14	12.59%	\$64,935.72	\$25,974.29		\$ 25,974.29
Vigo	\$758,817.47	\$146,404.34	19.29%	\$612,413.13	\$244,965.25	-\$358.00	\$ 244,607.25

Wabash	\$77,326.12	\$15,856.47	20.51%	\$61,469.65	\$24,587.86	\$	24,587.86
Warren	\$24,464.93	\$3,043.50	12.44%	\$21,421.43	\$8,568.57	\$	8,568.57
Warrick	\$97,620.91	\$16,910.71	17.32%	\$80,710.20	\$32,284.08	\$	32,284.08
Washington	\$209,240.22	\$17,642.98	8.43%	\$191,597.24	\$76,638.90	\$	76,638.90
<b>Totals</b>	<b>\$22,208,474.71</b>	<b>\$2,593,831.29</b>		<b>\$19,614,643.42</b>	<b>\$7,845,857.35</b>	<b>-\$118,348.25</b>	<b>\$ 7,727,509.10</b>

The reimbursement requests totaled \$7,727,509.10 before adjustments. Mr. Mason described a change in the spreadsheet so that it shows prior quarter adjustments.

Mr. Mason explained there was a positive adjustment for Benton County and reminded the Commission it did not reimburse the county last quarter because they were unable to submit a reimbursement request due to COVID-related issues. To receive reimbursement for 3Q2020, the county requests reimbursement of \$7,041.22 be added to their reimbursement amount for 4Q2020. Mr. Mason further explained there were several adjustments reducing the amount to be reimbursed due to the ongoing desk audits. Mr. Mason discussed the \$121,663.76 adjustment for Marion County due to overpayment last quarter. The overpayment resulted from an error in our reimbursement form created specifically for Marion County and the county was not at fault. Mr. Mason confirmed the Marion County reimbursement form has been corrected.

Chairman Rutherford invited questions and objections from Commission members on the reimbursement requests. There were no questions or objections. The reimbursement requests passed as presented by Mr. Mason.

### **3. Approval of December 16, 2020 Meeting Minutes**

Returning to the regular agenda, Chairman Rutherford invited questions, comments, concerns, and objections to the Minutes from the December 16, 2020 meeting. There were none. The Minutes were approved.

### **4. Approval of Amended Vigo County Comprehensive Plan**

Mr. Mason explained the main purpose for the amended Comprehensive Plan was to update it from its original form. The amendment also addressed Vigo County's change from a part-time chief to a full-time chief. Ms. Etling confirmed Mr. Mason's explanation regarding the changes. Mr. Rutherford invited questions, concerns, and comments regarding the proposed amended Plan. There were no objections to approving Vigo County's proposed amended Comprehensive Plan and it was approved.

### **5. Legislative & Policy Update**

Action Request: Mr. Cullen began by explaining an action request relating to the Coronavirus Fiscal Recovery Funds from the American Recovery Act and whether any of the state-level funds could be used to benefit public defense and the Commission. Mr. Cullen explained that a glut of cases not yet prosecuted due to the coronavirus could be filed once coronavirus restrictions are lifted, directly affecting public defense services. Mr. Cullen requested permission from the Commission to work with the State Budget Agency

toward creating a fund made up of Coronavirus Fiscal Recovery Funds the Commission could access to support public defense services throughout the State.

Chairman Rutherford invited comments, questions, and concerns. **[Judge Diekhoff joined the meeting at this point, 2:22 pm]** Rep. Lauer asked who Mr. Cullen had been working with legislatively regarding proposed language for the fund. Mr. Cullen explained he isn't working with any legislators yet and the first step will be to work with the State Budget Agency. Ms. Corley commented that the Council is working to put together a training for everyone who is responsible for public defender programs to help with accessing the funds made available to counties. Chairman Rutherford asked whether there were any objections to the proposal. There were no objections, but Rep. Lauer abstained from voting. The proposal was approved with one abstention.

Budget Proposal: Mr. Cullen reported the Commission's proposal has gone well and highlighted this being the first year since the Commission was established that its budget was included in the Governor's proposed budget. Mr. Cullen explained that HB1001, the Commission's primary legislative priority this session, is now pending before the Senate and Commission staff will continue to monitor its progress.

Misdemeanor Bill: Mr. Cullen reminded the Commission members that the Commission would support the misdemeanor bill if it continued to move through the legislature. Mr. Cullen reported the bill did not move and it is effectively dead for this session.

Public Defender Retirement Fund: Mr. Cullen referenced a bill introduced this session that would have allowed certain public defenders to participate in the Prosecutor/Judges' retirement fund. The bill did not receive a hearing. Mr. Mason explained the Commission has a 2012 guideline that public defender retirement and benefits are not included in Standard G. Mr. Mason anticipates the chief public defenders are planning to work on a proposal, including a financial analysis, regarding this issue for the June 2021 meeting. Mr. Mason expects the chief's proposal to help show how parity can be achieved between the two different retirement plans at issue here: PERF and PARF. Jim Abbs confirmed the chief's plan to bring numbers and additional conversation to the Commission at the June 2021 meeting regarding this issue. Mr. Abbs further stated he hopes to provide information to the Commission about a month prior to the meeting so the Commission can review the information in advance.

## 6. Local Public Defender Board Appointments

Those being presented for consideration as public defender board appointees were as follows:

<b>County:</b>	<b>Candidate:</b>
<b>Lawrence</b>	<b>Tonja Kinder (consensus)</b>
<b>Fayette</b>	<b>Brayton Johns / Dale Lanning (not consensus)</b>
<b>Montgomery</b>	<b>David Long / David Hadley (not consensus)</b>

Lawrence County: Mr. Cullen recommended making the interim appointment, Tonja Kinder, permanent for a 3-year term. There were no questions, comments, or objections regarding appointing Ms. Kinder. She was appointed for the 3-year term.

Fayette County: Mr. Cullen explained that Dale Lanning is presently the judicial appointee to the board. The president of the county commissioners and the public defender board chair recommended the Commission appoint Mr. Lanning as the Commission's appointee. Because Mr. Lanning was formerly a judicial appointment, this is the first time the Commission has considered his appointment. Mr. Cullen stated Commission staff are concerned because Mr. Lanning is a bail agent, he may have a conflict of interest with serving as a public defender board member.

Because Commission staff did not receive any additional recommendations for potential board members from the county, Mr. Cullen explained that he contacted former State Rep. Jud McMillin and asked for any recommendations. Mr. McMillin recommended Brayton Johns, a current law student intending to practice law in Fayette County. Mr. McMillin offered to mentor Mr. Johns in this role. Mr. Cullen noted that appointing Mr. Johns would allow the Commission to appoint a new person with a new perspective who could be a long-term asset to the board. Mr. Cullen acknowledged that appointing Mr. Johns to the board in lieu of Mr. Lanning would contravene the county's recommendations.

Chairman Rutherford invited questions and comments regarding this issue. Ms. Corley asked whether Commission staff had any information regarding Mr. Lanning's performance or conduct while serving on the board. Mr. Cullen referred to Mr. Lanning's recommendations included in the materials stating that Mr. Lanning is familiar with the system from being a bail agent and, from the county commissioners, stating Mr. Lanning has served to their satisfaction, he is willing to continue to serve, and they saw no reason to change the composition of the board. That was the extent of the information Commission staff received. Ms. Corley acknowledged she does not see Mr. Lanning's profession as a total exclusion to serving as a board member. She would like to have further information regarding his activities on the board before deciding this issue. She asked whether his nomination needed to be decided at this meeting

Judge Hanlon asked whether the Commission had heard from any of the local public defenders regarding Mr. Lanning. Mr. Cullen answered the Commission had not and offered to ask the public defenders for their comments. Judge Hanlon acknowledged she understands the concern about a conflict, particularly if, for example, the board was considering a pre-trial release program, but, like Ms. Corley, did not want to disregard the unanimous local recommendation. Judge Hanlon would like input from the public defenders who practice in the county as to this issue.

Mr. Bray commented he would oppose Mr. Lanning's appointment based on a perception that Mr. Lanning would have a vested interest in having control on the board. Judge Hanlon indicated she understood Mr. Bray's concern.

Mr. Hensel noted that those who recommended Mr. Lanning may not have anticipated the Commission's hesitation regarding a potential conflict due to his job as a bail agent, and he stated that he would like to hear whether they would have any cautions

about his ability to carry out the responsibilities of this position. Judge Diekhoff expressed her agreement with the previous comments, cautioned against rejecting someone who has been fulfilling his responsibilities on the county board, and agreed the Commission would benefit from additional information before deciding this issue. Mr. Cullen therefore recommended the Commission take no action so he could gather additional information.

Mr. Abbs expressed his concern with having a bail agent serve on the public defender board, noting that he would consider it to be an inherent conflict that could arise based upon his experience in a similar situation in Noble County.

Chairman Rutherford invited additional comments and concerns. Recognizing that Mr. Cullen was going to solicit further comments and perspectives, Judge Hanlon recommended that Mr. Cullen specifically ask those who recommended Mr. Lanning whether they believe he would have conflicts of interest on issues such as pre-trial release.

Ms. Corley moved to table this decision until the June 2021 meeting to allow Commission staff to reach out to Fayette County public defenders and to those who recommended Mr. Lanning to inquire about his performance so the Commission can receive more information for purposes of considering him. Mr. Hensel asked Commission staff to be clear when reaching out that some Commission members are concerned about potential conflict with a bail agent serving on the public defender board. Judge Hanlon seconded the motion.

Chairman Rutherford restated the motion: The Commission Board will do further investigation on Mr. Lanning, reaching out to those who recommended him and inquiring regarding his previous service, while specifying the Commission's concerns, and also contacting public defenders who practice in Fayette County about any concerns that they may have. There were no objections, and the motion was approved.

Montgomery County: Mr. Cullen reported that current board member, David Hadley, comes recommended for reappointment by the judges and by the current public defender board chair. He has a strong resume, he understands the judicial system, and he seems very dedicated. A second candidate, David Long, also contacted Commission staff for consideration. Mr. Cullen believes Mr. Long would also be a strong candidate. Mr. Cullen explained that Montgomery County has not sought reimbursement since 2013, and Commission staff does not know if the county is currently compliant with our standards. Mr. Cullen stated the question is: Does the Commission want to (1) reappoint the current board member and possibly maintain the status quo as to non-participation; or (2) go in a different direction and appoint someone new who might facilitate change in Montgomery County's participation?

Mr. Mason explained that in 2013 compliance issues arose with this county and the Commission withheld reimbursement. The county officially stopped submitting reimbursement requests in 2014. Mr. Cullen asked Mr. Hadley why the county was not seeking reimbursement. Mr. Hadley reported to Mr. Cullen that there was no will on part of the county council to seek reimbursement. Mr. Cullen additionally asked Mr. Hadley if the board had made efforts to change the county council's will. Mr. Hadley answered they had not, as the board had been informed consistently from the county's managing public

defender that it was simply not an option to participate in the Commission's reimbursement program. It is Mr. Cullen's impression that Mr. Long expressed an interest in trying to bring Montgomery County back into active status with the Commission's reimbursement.

Chairman Rutherford invited questions, comments, and concerns. Mr. Cullen stated he did not feel comfortable making a recommendation. Ms. Corley said she does not feel ready to vote on this issue. She acknowledged the strong support from the county but expressed concern about the county not seeking reimbursement. Ms. Corley said she wants more info on the second candidate and his perspective on public defense. Ms. Corley asked to delay this decision to the June meeting as well.

Judge Hanlon inquired whether this opening would lead to a vacancy on the county board. Mr. Cullen affirmed that there would be a holdover member until a new member is appointed. Mr. Cullen asked what specific information the Commission would like him to pursue. Ms. Corley stated she wants to understand from Mr. Long what attracts him to the public defender board position and what he hopes to accomplish in the role. Chairman Rutherford said the Commission also wants to know from Mr. Hadley what he plans to do to get the county back into participation with the Commission and how he would approach that goal. Mr. Cullen suggested developing a list of questions for both candidates to answer in writing, which he would then share with the Commission. Ms. Corley voiced her approval for the plan. Mr. Cullen stated he would follow this approach for both Montgomery as well as Fayette County.

Chairman Rutherford summarized the proposal as tabling the Montgomery County appointment process until the June meeting to allow Commission staff to gather additional information by submitting the same written questions to each Montgomery County candidate to allow them to report their perspectives on public defense, their views on once again seeking reimbursement from the Commission, and how they would pursue that goal. There were no objections. The motion was approved.

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

Mr. Mason provided the status of the Fund. Regarding DCS payments, Mr. Mason reported that federal funds passed through from DCS paid \$143,000.83 last quarter. Additionally, Mr. Mason anticipates the Commission receiving a projected \$626,871.68 over the next four quarters, including this quarter, from DCS. Mr. Mason hopes to present pilot projects at the June 2021 meeting and to fund those projects with the money received from DCS. There were no questions, comments, or concerns from Commission members.

## **8. Commission Staff Update**

Mr. Mason encouraged everyone to come to the June 2021 meeting. Topics expected to be covered are: PARF/PERF, pilot projects, the Commission's budget, suggested recommendations for workload changes with information to submit to the public for public comment. Mr. Mason discussed the county breakdowns for reimbursement and invited comments from Commission members regarding whether those pages are useful to them.

Mr. Mason also inquired as to the information members would like to see included on those pages.

## **9. Other Matters**

There were no additional matters.

Mr. Bray moved to adjourn. There were no objections. The meeting adjourned at 3:01 pm.

# INDIANA PUBLIC DEFENDER COMMISSION

June 16, 2021

2:00 PM

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

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## **Members in attendance:**

Mr. Mark W. Rutherford, Chair (in person)  
Mr. Richard Bray (in person)  
Ms. Bernice Corley (remote)  
Hon. Mary Ellen Diekhoff (remote)  
Rep. Ragen Hatcher (remote)  
Hon. Kelsey B. Hanlon (remote)  
Mr. David J. Hensel (remote)  
Rep. Ryan Lauer (remote)  
Hon. Steven P. Meyer (remote)  
Sen. Gregory G. Taylor (remote)

## **Members absent:**

Sen. Eric Koch

## **Staff in attendance:**

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

## **Audience members (all remote):**

Jim Abbs, Noble County Chief Public Defender and President of Indiana Chief Public Defender Association  
Bruce Andis, Lawrence County Chief Public Defender  
Greg Bowes, Attorney  
Ray Casanova, Marion County Public Defender Agency  
Victoria Casanova, Private Practitioner  
Ruth Johnson, Brown County Public Defender Board Chair  
Amy Karozos, State Public Defender  
Lisa Moody, Gibson County Chief Public Defender  
Barbara Simmons, Ripley County Public Defender

At two o'clock, Senior Staff Attorney Derrick Mason recognized that a quorum of the Commission was present and called the roll of the members. Guests introduced themselves.

Members of the Commission went into a remote Zoom breakout room for the scheduled Executive Session for a Commission staff job performance discussion. Following the Executive Session, Chair Mark Rutherford called the public portion of the meeting to order at 3:20 p.m.

Chairman Rutherford stated that two Commission members had motions to make in open session. First, Sen. Taylor moved to increase Derrick Mason's salary to \$136,000, beginning July 1, 2021. Judge Hanlon seconded the motion. There was no discussion. The Chair called the roll, and the vote was as follows:

Judge Hanlon: yes

Judge Meyer: no

Judge Diekhoff: yes

Sen. Taylor: yes

Rep. Lauer: no

Rep. Hatcher: yes

Ms. Corley: yes

Mr. Bray: no

Mr. Hensel: yes

The Chair abstained. The motion passed 6-3.

The Chair indicated that he thought Mr. Mason's title should change. Judge Hanlon moved to change Mr. Mason's title to Director & Chief Counsel. Judge Diekhoff seconded the motion. There was neither discussion nor objection. The motion passed.

The Chair stated that due to the anticipated length of the meeting, the Commission would next proceed to Agenda Item Number 6, Status of County Compliance. There were no objections.

## 6. Status of County Compliance

### *A. Brown County*

Mr. Mason introduced Ruth Johnson, Brown County Public Defender Board Chair. Ms. Johnson provided a brief background concerning the Brown County Sheriff's Department investigating a Brown County public defender for his client representation and billing practices. This ongoing Brown County issue has been described to the Commission in previous meetings. The most significant update is that the public defender at the heart of the investigation, Greg Bowes (in attendance today), has resigned as a Brown County public defender. Due to what the Brown County Public Defender Board finds to be significant threats to the independence of Brown County public defenders, Ms. Johnson does not believe she can certify the County is in compliance with its requirements such that it can be reimbursed by the Commission for its public defense expenses. She noted that Brown County has had compliance issues before and that funding has been withheld until the County became compliant. Ms. Johnson recommends that action again and asks the Commission to decline reimbursement to the county until the County signs a document acknowledging the independence of the County Public Defender Board and its attorneys.

Several Commission members expressed frustration with what Brown County has done but questioned whether Ms. Johnson's solution was best. Judge Meyer asked whether, as one section of the document required, the Commission should require the County public defender Board to review allegedly criminal behavior. Mr. Hensel asked whether the Commission has the authority to require the County to make these acknowledgements. Judge Hanlon opined that this situation seemed unprecedented, and asked Mr. Mason whether anything similar had ever occurred. He responded that he had not seen anything like this. Ms. Corley stated that this was "gut-wrenching." She and Mr. Abbs both argued that withholding funds was the only stick the Commission has to force Brown County to address the issue. Sen. Taylor asked whether the proposed action would bear the intended fruit. Mr. Cullen suggested the Commission could seek a legislative solution such as requiring the State Police to investigate any such situations, removing the jurisdiction of local law enforcement.

Judge Meyer moved to send a letter to Brown County and withhold reimbursement from the county for 1Q2021 at least until the Commission's September 2021 meeting to allow Commission staff to research additional consequences that may be imposed. Ms. Corley seconded the motion. Judge Diekhoff questioned whether the letter would state how inappropriate the County's actions have been. Judge Meyer affirmed that it should.

Judge Hanlon inquired whether Judge Meyer would accept a friendly amendment to state that at 90-day letter would be sent, staying reimbursement until Brown County would explain how this

situation would never again occur. Judge Meyer said he was open to such a friendly amendment. Ms. Corley moved to amend Judge Meyer's motion accordingly. Judge Hanlon seconded the motion to amend. There was no further discussion. The motion to amend was approved.

There was no further discussion on Judge Meyer's motion. The motion was approved.

### *B. Other County Updates*

Mr. Mason noted that there may be other pay parity issues. Clark County has been paying its chief public defender \$141,000 for years, and thus has not been in compliance during that time. He recommended that the county be given until January 1, 2022, to come into compliance or lose reimbursement for the chief's salary.

There were no objections to the recommendation, and the recommendation was approved.

Mr. Mason noted that Ohio County has been paying defenders less than \$12,000 for 0.5 FTE. He recommended that staff investigate the issue and send a letter requiring pay parity compliance if there is indeed a pay parity issue.

There were no objections to the recommendation, and the recommendation was approved.

Mr. Mason discussed a multi-county issue, and for the first time recommended a 90-day letter be sent for such an issue. Three counties (Ripley, Fayette, and Decatur) are all using one attorney for a combined usage above the caseload requirements. Mr. Mason recognized it is hard for counties to find attorneys, that Indiana has a shortage of attorneys, and that counties need to pay more to find and keep attorneys.

Mr. Mason recommended a 90-day letter for all three counties, requiring a plan to be put in place to resolve this issue.

Judge Meyer asked whether the Commission could make an exception for small counties who have trouble keeping attorneys. Mr. Mason replied the Commission could modify its standards, but such modification would be the required course.

Judge Hanlon opined that this is a problem that is only going to get worse. She argued the Commission needs to be careful not to price counties out of this program. Where the State pays for the top prosecutors in each county, but not the top public defenders, many small counties do or will face increasing challenges.

Ms. Corley asked if creating a multi-county regional office would help. Mr. Mason responded that it could, but it could also cost more, and creating a multi-county regional office would not necessarily resolve the issue. Ms. Corley stated it might be time to ask the state to pay for the top two public defenders in each county. Judge Hanlon agreed, stating that might be more important than misdemeanor reimbursement.

After this discussion, there were no objections to the staff recommendation to send a 90-day letter to the three counties, and the recommendation was approved.

## **7. Requests for 40% Reimbursement in Non-Capital Cases**

Mr. Mason reminded the Commission that Brown County's reimbursement would be withheld, thus making the total reimbursement \$7,402,378.55. Mr. Mason recommended reimbursement as provided in the following table, minus Brown County's reimbursement amount:

# INDIANA PUBLIC DEFENDER COMMISSION

## First Quarter 2021 Requests for Reimbursements in Non-Capital Cases

6/16/2021

County	Total Expenditure	Non-reimbursable Adjustment	% Adjusted	Eligible Expenditure	1Q2021 Reimbursement	Prior Quarter Adjustment	Total Payment
Adams	\$110,123.48	\$19,468.82	17.68%	\$90,654.66	\$36,261.86		\$ 36,261.86
Allen	\$1,130,865.31	\$95,558.38	8.45%	\$1,035,306.93	\$414,122.77		\$ 414,122.77
Benton	\$28,930.00	\$9,663.00	33.40%	\$19,267.00	\$7,706.80		\$ 7,706.80
Blackford	\$50,614.00	\$3,872.92	7.65%	\$46,741.08	\$18,696.43		\$ 18,696.43
Brown	\$49,133.17	\$11,938.29	24.30%	\$37,194.88	\$14,877.95		\$ -
Carroll	\$61,001.40	\$23,535.59	38.58%	\$37,465.81	\$14,986.33		\$ 14,986.33
Cass	\$177,778.42	\$23,522.07	13.23%	\$154,256.35	\$61,702.54		\$ 61,702.54
Clark*	\$392,265.60	\$17,593.18	4.49%	\$374,672.42	\$149,868.97		\$ 134,926.03
Clinton	\$70,318.74	\$20,049.79	28.51%	\$50,268.95	\$20,107.58		\$ 20,107.58
Decatur	\$99,154.37	\$20,880.89	21.06%	\$78,273.48	\$31,309.39		\$ 31,309.39
Dekalb	\$180,380.14	\$15,811.00	8.77%	\$164,569.14	\$65,827.66		\$ 65,827.66
Delaware	\$364,992.15	\$892.04	0.24%	\$364,100.11	\$145,640.04		\$ 145,640.04
Elkhart	\$747,924.02	\$145,353.93	19.43%	\$602,570.09	\$241,028.04		\$ 241,028.04
Fayette	\$91,483.85	\$12,028.91	13.15%	\$79,454.94	\$31,781.98		\$ 31,781.98
Floyd	\$189,502.31	\$10,120.95	5.34%	\$179,381.36	\$71,752.54		\$ 71,752.54
Fountain	\$24,530.67	\$3,603.21	14.69%	\$20,927.46	\$8,370.98		\$ 8,370.98
Fulton	\$82,307.92	\$20,805.91	25.28%	\$61,502.01	\$24,600.80		\$ 24,600.80
Gibson	\$149,437.31	\$20,591.31	13.78%	\$128,846.00	\$51,538.40		\$ 51,538.40
Grant	\$236,858.59	\$2,798.45	1.18%	\$234,060.14	\$93,624.06		\$ 93,624.06
Greene	\$141,873.80	\$22,034.49	15.53%	\$119,839.31	\$47,935.73		\$ 47,935.73
Hancock	\$124,115.21	\$5,114.36	4.12%	\$119,000.85	\$47,600.34		\$ 47,600.34
Harrison	\$113,652.45	\$8,743.02	7.69%	\$104,909.43	\$41,963.77		\$ 41,963.77
Hendricks	\$448,766.00	\$83,488.31	18.60%	\$365,277.69	\$146,111.07		\$ 146,111.07
Howard	\$493,510.77	\$47,002.93	9.52%	\$446,507.84	\$178,603.14		\$ 178,603.14
Jackson	\$211,530.06	\$8,575.63	4.05%	\$202,954.43	\$81,181.77		\$ 81,181.77
Jasper	\$63,158.86	\$15,772.44	24.97%	\$47,386.42	\$18,954.57		\$ 18,954.57
Jay	\$114,015.54	\$13,354.04	11.71%	\$100,661.50	\$40,264.60		\$ 40,264.60
Jefferson	\$211,993.10	\$35,636.64	16.81%	\$176,356.46	\$70,542.59		\$ 70,542.59
Jennings	\$128,133.40	\$18,088.88	14.12%	\$110,044.52	\$44,017.81		\$ 44,017.81
Knox	\$223,913.43	\$53,314.33	23.81%	\$170,599.10	\$68,239.64		\$ 68,239.64
Kosciusko	\$298,972.78	\$88,215.79	29.51%	\$210,756.99	\$84,302.80		\$ 84,302.80
LaGrange	\$61,149.23	\$8,828.96	14.44%	\$52,320.27	\$20,928.11		\$ 20,928.11
Lake	\$1,421,875.93	\$17,803.24	1.25%	\$1,404,072.69	\$561,629.07	\$25,912.47	\$ 587,541.54
LaPorte	\$272,935.39	\$20,285.78	7.43%	\$252,649.61	\$101,059.85		\$ 101,059.85
Lawrence	\$243,488.57	\$39,894.08	16.38%	\$203,594.49	\$81,437.80		\$ 81,437.80
Madison	\$474,341.03	\$10,373.22	2.19%	\$463,967.81	\$185,587.13		\$ 185,587.13
Marion	\$5,803,707.29	\$562,805.47	9.70%	\$5,240,901.82	\$2,096,360.73		\$ 2,096,360.73
Martin	\$64,209.55	\$14,043.91	21.87%	\$50,165.64	\$20,066.26		\$ 20,066.26
Miami	\$186,687.70	\$26,923.12	14.42%	\$159,764.58	\$63,905.83		\$ 63,905.83
Monroe	\$576,392.70	\$71,716.61	12.44%	\$504,676.09	\$201,870.44		\$ 201,870.44
Noble	\$237,137.35	\$42,710.18	18.01%	\$194,427.17	\$77,770.87		\$ 77,770.87
Ohio	\$18,354.81	\$1,645.11	8.96%	\$16,709.70	\$6,683.88		\$ 6,683.88
Orange	\$108,786.51	\$29,390.36	27.02%	\$79,396.15	\$31,758.46		\$ 31,758.46
Owen	\$61,299.42	\$10,897.42	17.78%	\$50,402.00	\$20,160.80		\$ 20,160.80
Parke	\$44,253.86	\$9,307.58	21.03%	\$34,946.28	\$13,978.51		\$ 13,978.51
Perry	\$25,889.68	\$2,502.92	9.67%	\$23,386.76	\$9,354.70		\$ 9,354.70
Pike	\$36,921.29	\$1,109.60	3.01%	\$35,811.69	\$14,324.68		\$ 14,324.68
Pulaski	\$86,146.68	\$14,854.67	17.24%	\$71,292.01	\$28,516.80		\$ 28,516.80
Ripley	\$52,463.35	\$8,472.85	16.15%	\$43,990.50	\$17,596.20		\$ 17,596.20
Rush	\$94,219.55	\$17,455.13	18.53%	\$76,764.42	\$30,705.77		\$ 30,705.77
Scott	\$105,745.55	\$12,260.68	11.59%	\$93,484.87	\$37,393.95		\$ 37,393.95
Shelby	\$142,365.97	\$24,815.29	17.43%	\$117,550.68	\$47,020.27		\$ 47,020.27
Spencer	\$105,280.83	\$11,510.09	10.93%	\$93,770.74	\$37,508.30		\$ 37,508.30
Steuben	\$129,202.77	\$43,923.10	34.00%	\$85,279.67	\$34,111.87		\$ 34,111.87
StJoseph	\$610,910.81	\$57,790.82	9.46%	\$553,119.99	\$221,248.00		\$ 221,248.00
Sullivan	\$50,824.55	\$7,663.78	15.08%	\$43,160.77	\$17,264.31		\$ 17,264.31
Switzerland	\$45,664.45	\$9,027.78	19.77%	\$36,636.67	\$14,654.67		\$ 14,654.67
Tippecanoe	\$964,021.94	\$139,718.13	14.49%	\$824,303.81	\$329,721.53		\$ 329,721.53
Union	\$14,166.00	\$1,632.36	11.52%	\$12,533.64	\$5,013.46		\$ 5,013.46
Vanderburgh	\$743,927.26	\$49,225.43	6.62%	\$694,701.83	\$277,880.73		\$ 277,880.73
Vermillion	\$63,708.62	\$9,514.21	14.93%	\$54,194.41	\$21,677.77		\$ 21,677.77
Vigo	\$741,924.13	\$109,484.53	14.76%	\$632,439.60	\$252,975.84		\$ 252,975.84
Wabash	\$111,439.80	\$15,146.42	13.59%	\$96,293.38	\$38,517.35		\$ 38,517.35
Warren	\$7,077.00	\$2,528.00	35.72%	\$4,549.00	\$1,819.60		\$ 1,819.60
Warrick	\$166,032.89	\$17,838.59	10.74%	\$148,194.30	\$59,277.72		\$ 59,277.72
Washington	\$150,639.32	\$18,182.42	12.07%	\$132,456.90	\$52,982.76		\$ 52,982.76
<b>Totals</b>	<b>\$20,834,428.63</b>	<b>\$2,318,711.34</b>		<b>\$18,515,717.29</b>	<b>\$7,406,286.97</b>	<b>\$25,912.47</b>	<b>\$ 7,402,378.55</b>
*Proposed Reduction for Chief Benefits & Salary in Clark:				\$ 14,942.94			\$ 7,387,435.61

Judge Meyer moved to reimburse the counties in the amount of \$7,402,378.55. Judge Diekhoff seconded the motion. There were no objections, and the motion passed.

## 2. Approval of Minutes of the March 19, 2021 Meeting

The Chair inquired whether there were any corrections or changes to the Minutes from the March 19, 2021 meeting. There were none. The minutes were approved.

## 3. FY 22 Internal Budget and “At Risk Youth & Family” Funding

### A. Internal Budget

Mr. Mason reminded the Commission that Commission staff use an internal budget for operating expenses. For Fiscal Year 2022, the budget approved was as follows:

<b>FY2021-2022 Budget</b>		<b>Budget Amount</b>	
Payroll		\$ 861,868.12	
Travel		\$ 16,000.00	
Interagency Charges (IOT, etc.)		\$ 20,000.00	
Rentals		\$ 39,000.00	
Admin Ops/Supplies/Misc.		\$ 15,000.00	
Contractual		\$ -	
Subtotal		<b>\$ 951,868.12</b>	2.87%
<b>Remaining for Reimbursements</b>		<b>\$ 32,168,131.88</b>	97.13%

The above includes the salary adjustment for Mr. Mason, implementation of salary parity for the remainder of staff, restores sums from COVID shrink-down including allowing for conferences, increased rent, etc. The Chair noted that 97% still goes back to the counties. Mr. Mason clarified that Title IV funds are not included in this amount, so actually more than 97% goes to county reimbursements.

Mr. Hensel moved to approve the internal budget. Sen. Taylor and Judge Hanlon seconded the motion. There were no objections. The motion was approved.

### B. Title IV Funds

Mr. Mason stated that the Commission is looking for a county partner to use Title IV funds.

Judge Diekhoff moved to approve Mr. Mason’s recommendation for use of the Title IV funds. Judge Hanlon seconded the motion. Judge Hanlon clarified that the money is not earmarked for child welfare.

There were no objections. The motion was approved.

### *C. Title IV Funds (part 2)*

Mr. Mason informed the Commission that two million dollars have been allocated to the Commission for children. A pilot program that the Commission would lead was specifically discussed on the Senate floor. One proposal is to embed experts with public defenders, where the support individuals (support staff or social workers) could attend meetings or hearings with or on behalf of attorneys and support parents. Vigo and Monroe Counties are interested. Pilot programs have been started in Colorado, with good results: children have been reunified with parents faster.

Senator Taylor asked if the program should be piloted in Marion County, where similar programs already exist. Mr. Mason explained that because Marion County already has a program, Commission staff are interested in starting with a clean slate and showing counties how effective the program can be.

In response to Commission member questions, Mr. Mason explained that the social worker would be working for the public defenders. The program would assist and supplement civil legal aid funding. It is a holistic program that would start at the time children are being considered to be CHINS. The Commission wants to hire a social worker once it's confirmed with DCS that the money will be available.

There were no objections on hiring a Commission staff person with Title IV dollars.

#### **4. Chief Public Defender Salary & Effective Date**

Mr. Mason explains the Chief Public Defender salary is required to be in parity with local prosecutors. Judge Hanlon stated that she thinks the issue of parity needs to be readdressed.

There were no questions or concerns, or objections. The staff recommendation passed without objection.

Mr. Abbs, when asked, stated that the Chief Public Defender concerns (original Agenda items 13 – 14) could be tabled until the September meeting, and could possibly be resolved with Commission staff.

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

Mr. Cullen first discussed the consensus candidates. From Montgomery County, one of the nominees, David Long, did not respond to Mr. Cullen's inquiries for more information; David Hadley is thus the consensus nominee. There were 4 additional consensus candidates, which staff

recommended: Lawrence County (Gerald Hill); Adams County (Tony Mellencamp); Ripley County (Elizabeth Baumgartner); and Tippecanoe County (Marcel Katz).

Judge Hanlon moved to appoint all the consensus candidates; Mr. Bray seconded the motion. There were no objections; the consensus candidates were appointed to 3-year terms effective immediately.

With regard to Fayette County, where there was a contested appointment, Mr. Cullen explained that Dale Lanning has been unanimously recommended by local officials but that he is a bail agent in the county. As discussed in a Commission Staff Attorney memorandum, staff believes there is an innate conflict of interest.

Ms. Corley moved that the Commission appoint Brayton Johns, the staff recommendation. Judge Diekhoff seconded the motion. There were no objections. Mr. Johns was appointed to a 3-year term effective immediately.

Due to time constraints, and two members who had left the meeting, it was decided to table the remaining agenda items until a special meeting in July. The date and time for the special meeting will be Wednesday, July 21, 2021, at 2 p.m.

The meeting was adjourned at 5:01 p.m.