

**INDIANA PUBLIC DEFENDER COMMISSION**

**March 24, 2023**

**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)  
Hon. Mary Ellen Diekhoff (remote)  
Hon. Kelsey B. Hanlon (remote)  
Mr. David J. Hensel (in person)  
Rep. Ryan Lauer (in person)  
Hon. Steven P. Meyer (in person)  
Sen. Gregory G. Taylor (remote)

**Members absent:**

Ms. Samantha DeWester  
Rep. Ragen Hatcher  
Sen. Eric Koch

**Staff in attendance:**

Derrick Mason (in person)  
Andrew Cullen (in person)  
Paula Diaz (in person)  
Andrew Falk (remote)  
Linda Hunter (in person)  
Jennifer Pinkston (remote)

**Audience members:**

Jim Abbs, Noble County Chief Public  
Defender and President, Chiefs  
Association (remote)  
Ray Casanova, Marion County Public  
Defender Agency (in person)  
Gretchen Etling, Vigo County Chief  
Public Defender (remote)  
Lisa Moody, Gibson County Chief Public  
Defender (remote)

At 2:00 p.m., Chair Mark Rutherford called the meeting to order. Introductions were made and it was established that a quorum was present. Ms. Corley stated that she had to leave at 2:45 p.m. and requested that agenda item 7 be discussed before that time.

**1. Approval of Minutes of the December 14, 2022 Meeting**

There were no changes to the minutes. Judge Meyer moved to approve the minutes. Mr. Hensel seconded the motion. There were no objections, and the motion carried unanimously.

**2. Approval of Amended Comprehensive Plan: Dekalb County**

Mr. Mason reported that Dekalb County has updated its Comprehensive Plan. The changes were highlighted in the materials provided to Commission members. Most of the changes were technical amendments, such as updating the hourly rate to \$100 per hour, changing felony “classes” to “levels,” making changes to conflict counsel appointments, etc. The biggest change, he noted, was the creation of a deputy chief public defender position, which would be paid the same as a chief deputy prosecutor. Mr. Mason recommended approval of the amended plan.

Ms. Corley moved to approve the Dekalb County Amended Comprehensive Plan. Judge Meyer seconded the motion. The motion carried unanimously.

Judge Meyer asked if the Commission expected counties to reimburse defenders at the hourly rate of \$100 per hour for time driving plus their mileage. Mr. Mason responded that it was a good question that has come up before. The Commission only regulates the hourly rate, he said, and it is left up to the county whether to also reimburse mileage.

**3. Financial Status of Public Defense Fund & Title IV-E Reimbursements**

Mr. Mason provided the Commission with the financial status of the public defense fund as well as the state of Title IV-E reimbursements. He noted that most counties have only received Title IV-E reimbursements for two quarters, but the Commission was still able to send \$554,778.08 to the counties during that time. He also clarified that the Title IV-E

reimbursements are from the Federal government, and not the Commission's own Title IV reimbursement.

Mr. Mason stated that the Commission asks the counties how they use the Title IV-E funds. Many counties have not yet spent the money. Of those who have, most have spent it on public defense. One county used the money for vaping education for high school students.

Mr. Mason reported that the Public Defense Fund was sufficient to pay the reimbursement requests. The Commission also has available \$2.4 million for At-Risk Youth and Family related expenses.

Ms. Corley asked how the Commission knows whether the funds have been spent and why the Commission wants to know how Title IV-E funds are spent. Mr. Mason responded that the Commission required the counties to state how they used the funds, and all the counties have responded. The Commission asked how the funds are used so the Commission can tell the Legislature how the money is used.

#### **4. Status of County Compliance**

##### *a. Howard & Vanderburgh County Letter Follow-up*

Mr. Mason informed the Commission that after the Commission's December meeting, Commission staff sent (non-formal 90-day) letters to Howard and Vanderburgh counties regarding outstanding salary parity issues. Howard County just reported that it would be addressing its pay parity issues at the April County Council meeting, and the Howard County Chief Public Defender stated that he believed the issue would be resolved. Mr. Mason suggested that the Commission could wait and see what the County Council does, or it could take preemptive action.

Judge Meyer stated that he did not see any harm in sending a letter to the Council, reiterating what the Council needed to do, and recognizing the county's efforts to comply. After brief discussion, Judge Meyer moved to send such a letter. Ms. Corley seconded the motion. There was no further discussion and no objections. The motion carried.

Mr. Mason reported that Vanderburgh has not provided a proposal for pay parity in 2024, but the county is speaking with Commission staff. The county has asked for salaries of

comparable counties around the state. The Commission reported to the county that most public defender salaries are between \$75,000 and \$100,000 per year, with the average in the mid-\$80s. Counties that pay in that salary range have identified fewer problems with attorney recruitment and retention. Delaware County was in a situation similar to Vanderburgh County, with unfilled positions and with losses of attorneys to DCS, but it raised its salaries to \$100,000 and it believes that increase will resolve its issues. Mr. Mason recommended that anyone whose counties might be dealing with similar issues talk to Commission staff and ask about the salary comparison study. He did not recommend further Commission action, and none was taken.

To accommodate Ms. Corley's earlier request, the Chair elected to discuss the Marion County Support Staff issue next, Agenda Item number 7.

## **7. New Standard Request**

*a. Cont'd From 12/14/2022 Mtg: Marion County Support Staff Pay Parity Request*

Mr. Mason reported that, as requested at the last Commission meeting, Commission staff drafted and sent a letter to the Marion County Public Defender Agency (MCPDA) for their use in attempting to increase support staff funding. Mr. Mason stated that he did not know how or whether MCPDA had used the letter.

Mr. Mason further informed the Commission that Commission staff surveyed Commission counties that have support staff. Twenty-four of the 31 surveyed counties provided responses. He provided the following summary of the responses:

### **Existence of a Salary Ordinance for Support Staff:**

17 counties had an ordinance

7 Counties did not have an ordinance

### **Of the 17 Counties With an Ordinance:**

- Ten (10) report that their support staff are paid the same and are neutral on a standard change
- Three (3) report that their support staff are paid less than prosecutorial staff due to the county classifying the positions differently
  - One (1) is appealing the classification of their staff to the county
  - All three (3) are neutral on a standard change
- Three (3) report that their support staff are paid more due to different classifications by the county
  - Two (2) oppose a standard that might lower compensation
  - One (1) is neutral

- One (1) reports they don't know if they are equally paid but that the county classifies the positions differently and would support a standard change

#### **Of the Seven (7) Counties Without an Ordinance:**

- Six (6) report that their support staff are paid less than prosecutorial staff
  - Three (3) report this is due to how the county classifies the positions
  - Three (3) do not say whether classification is or is not the issue
  - All support a standard change
- One (1) reports that their support staff are paid more than prosecutorial staff and opposes a standard change

#### **Miscellaneous:**

- The counties generally report that outside consultants are hired to classify positions
- Some counties report that prosecutors report all positions as “investigators” regardless of what they do which makes the public defense “secretaries” inherently classified lower
- Sometimes, even the hours worked in the positions are different (35 vs. 40) within the county
- Not all counties agree that all positions are comparable

Mr. Mason recommended to the Commission a middle-ground approach to the solution: allow counties to amend their comprehensive plans to require staff pay parity. He reasoned that such an approach would allow counties to maintain their autonomy as to whether they wished to be bound by staff pay parity standards. If the county were to so amend their comprehensive plan, the Commission would require the county to enforce it to receive reimbursement.

Ms. Corley reminded the Commission that the Public Defender Council did vote in favor of creating a solution to this problem. She reacted favorably to Mr. Mason's proposal. The Chair recognized Mr. Casanova and allowed him to speak for MCPDA. Mr. Casanova stated that a compensation study was completed and that as a result their support staff did receive a salary increase such that their salaries are similar to the prosecutor's office. It did not help social workers, however, since the prosecutor's office does not employ social workers. MCPDA is now heavily focused on moving to the new Criminal Justice Center, which is taking a lot of time. He said the Agency has considered a change in the county's comprehensive plan. He also noted the mayoral primary election in May. Mr. Casanova requested that the topic be tabled until the June Commission meeting. Mr. Abbs stated a concern that if counties begin to amend their comprehensive plans to include support staff pay parity, uniformity would be lost. He expressed skepticism that a provision in the

comprehensive plan would be sufficient to achieve the desired ends. Judge Hanlon expressed similar concerns, wondering if a county were in compliance with the Commission's standards but not in compliance with its own self-imposed requirements, would the Commission suspend reimbursement. Mr. Mason responded that when 90-day letters are sent, they are based on what counties require in their comprehensive plans. The Commission has been training county boards to manage their comprehensive plans for their county's needs, and the Commission is duty-bound to enforce what is in the county's comprehensive plan. There were no objections to tabling the issue, and the issue was tabled until the June meeting.

*b. Chief PD Request: Reduction of Support Staff Requirements*

Mr. Mason introduced a second staffing issue: the Chief's Public Defender Association has requested that the Commission reduce its adequately staffed requirement from .75 staff for every attorney to .5 staff for every attorney. The Chiefs are concerned due to the likelihood that many counties may need to hire additional attorneys in 2024 to meet the revised caseload standards, which under the current staffing requirements could also require staffing hires or lead to the denial of reimbursement requests.

Mr. Mason recommended that Commission staff study the issue, as he would like to further evaluate the issue. In return, Mr. Mason agreed that the Commission would not suspend any reimbursement in 2024 solely for inadequate staffing.

Mr. Abbs said he has been raising this issue since 2008. He noted that the .75 staffing requirement is the oldest standard the Commission has; it dates to 1994, before computers were commonly used and before many changes were made in how attorneys practice. He stated that the Chiefs are the experts that the Commission should be considering. He said it is fine for the Commission to study it if there will be no repercussions in 2024 but urged the Commission to study it carefully.

Mr. Mason said he would like to study this because there are differences of opinion about what types of support staff are necessary—investigators, social workers, paralegals, etc.—and how counties may individualize their staffing needs.

Sen. Taylor moved to adopt Mr. Mason's recommendation and study the issue, report back at the September meeting, and give counties grace in 2024. Mr. Hensel seconded the motion. There were no objections and the motion carried.

Having concluded the discussion of Agenda Item number 7, the Chair continued the regular order of business and resumed with Agenda Item number 4b.

#### **4. Status of County Compliance**

##### *b. Individual and Multi-County Compliance Updates*

Mr. Mason reported that the biggest caseload compliance issue is a multicounty attorney issue, noted that it may take a year to resolve, but did not recommend any Commission action. There were no other concerns and no need for any 90-day letters.

#### **5. Requests for Reimbursement:**

##### *a. 50% Reimbursement in Death Penalty Cases*

Mr. Mason stated that some of the Clinton County capital reimbursement requests are late due to the need to work through certain overpayment and double-payment issues. Despite the fact the requests were late, Mr. Mason recommended reimbursement of all requests (see table below). There were no questions or concerns. Judge Meyer moved to grant the reimbursement requests. Sen. Taylor seconded the motion. There were no objections, and the motion carried.

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### Reimbursement Requests in Capital Cases

March 24, 2023

COUNTY	DEFENDANT	TOTAL
Clinton	Ferrell	<b>\$56,302.43</b>
Marion	Dorsey	<b>\$6,978.00</b>
<b>TOTAL</b>		<b>\$63,280.43</b>

### LATE CLAIMS

Clinton	Ferrell	<b>\$17,014.65</b>
<b>TOTAL</b>		<b>\$80,295.08</b>

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

Mr. Mason reported that Pike County had no reimbursement requests for the fourth quarter of 2022. An initial investigation revealed nothing of concern. For the first time, each of the three counties in the WCIPDO submitted their requests for reimbursement collectively. The quarter was the highest ever: a total of \$9,006,575.45 (see table below). There were no questions or comments. Mr. Hensel moved to approve the reimbursement requests. Judge Diekhoff seconded the motion. There were no objections, and the motion carried.

# INDIANA PUBLIC DEFENDER COMMISSION

## Fourth Quarter 2022 Requests for Reimbursement in Non-Capital Cases 3/24/23

County	Total Expenditure	Non- reimbursable Adjustment	% Adjusted	Eligible Expenditure	40% Reimbursed	Prior Quarter Adjustments	Total Payment
Adams	\$122,024.27	\$21,676.21	17.76%	\$100,348.06	\$40,139.23		\$40,139.23
Allen	\$1,366,651.69	\$88,992.31	6.51%	\$1,277,659.38	\$511,063.75		\$511,063.75
Benton	\$6,506.38	\$971.88	14.94%	\$5,534.50	\$2,213.80		\$2,213.80
Blackford	\$59,233.30	\$9,070.15	15.31%	\$50,163.15	\$20,065.26		\$20,065.26
Brown	\$61,110.12	\$15,095.19	24.70%	\$46,014.93	\$18,405.97		\$18,405.97
Carroll	\$67,072.57	\$6,633.74	9.89%	\$60,438.83	\$24,175.53		\$24,175.53
Cass	\$183,802.02	\$24,749.34	13.47%	\$159,052.68	\$63,621.07		\$63,621.07
Clark	\$477,991.88	\$28,397.33	5.94%	\$449,594.55	\$179,837.82		\$179,837.82
Clinton	\$110,589.35	\$35,737.79	32.32%	\$74,851.56	\$29,940.63		\$29,940.63
Crawford	\$60,349.12	\$9,385.24	15.55%	\$50,963.88	\$20,385.55		\$20,385.55
Decatur	\$109,313.17	\$21,273.10	19.46%	\$88,040.07	\$35,216.03		\$35,216.03
DeKalb	\$238,492.95	\$21,759.22	9.12%	\$216,733.73	\$86,693.49		\$86,693.49
Delaware	\$395,749.82	\$7,068.09	1.79%	\$388,681.73	\$155,472.69		\$155,472.69
Elkhart	\$904,642.23	\$121,709.49	13.45%	\$782,932.74	\$313,173.10		\$313,173.10
Fayette	\$94,624.65	\$16,974.08	17.94%	\$77,650.57	\$31,060.23		\$31,060.23
Floyd	\$289,153.26	\$14,270.94	4.94%	\$274,882.32	\$109,952.93		\$109,952.93
Fulton	\$85,418.79	\$21,474.75	25.14%	\$63,944.04	\$25,577.62		\$25,577.62
Gibson	\$188,776.26	\$31,666.34	16.77%	\$157,109.92	\$62,843.97		\$62,843.97
Grant	\$291,757.38	\$2,635.88	0.90%	\$289,121.50	\$115,648.60		\$115,648.60
Greene	\$168,131.43	\$34,247.40	20.37%	\$133,884.03	\$53,553.61		\$53,553.61
Hancock	\$259,511.68	\$37,440.70	14.43%	\$222,070.98	\$88,828.39		\$88,828.39
Harrison	\$201,384.60	\$19,817.24	9.84%	\$181,567.36	\$72,626.95		\$72,626.95
Hendricks	\$516,101.71	\$77,665.99	15.05%	\$438,435.72	\$175,374.29	\$ (1,006.58)	\$174,367.71
Howard	\$464,064.84	\$35,768.26	7.71%	\$428,296.58	\$171,318.63		\$171,318.63
Jackson	\$261,581.34	\$8,873.49	3.39%	\$252,707.85	\$101,083.14		\$101,083.14
Jasper	\$151,307.41	\$38,490.12	25.44%	\$112,817.29	\$45,126.92		\$45,126.92
Jay	\$158,340.77	\$16,881.28	10.66%	\$141,459.49	\$56,583.80		\$56,583.80
Jefferson	\$198,884.97	\$25,168.18	12.65%	\$173,716.79	\$69,486.72		\$69,486.72
Jennings	\$117,270.64	\$13,071.96	11.15%	\$104,198.68	\$41,679.47		\$41,679.47
Knox	\$211,258.14	\$46,138.27	21.84%	\$165,119.87	\$66,047.95		\$66,047.95
Kosciusko	\$251,904.42	\$102,241.75	40.59%	\$149,662.67	\$59,865.07		\$59,865.07
LaGrange	\$130,558.80	\$23,133.29	17.72%	\$107,425.51	\$42,970.20		\$42,970.20
Lake	\$1,549,255.05	\$6,960.17	0.45%	\$1,542,294.88	\$616,917.95		\$616,917.95
LaPorte	\$281,135.69	\$32,098.92	11.42%	\$249,036.77	\$99,614.71		\$99,614.71
Lawrence	\$305,788.45	\$31,316.82	10.24%	\$274,471.63	\$109,788.65		\$109,788.65
Madison	\$555,596.58	\$15,342.73	2.76%	\$540,253.85	\$216,101.54		\$216,101.54
Marion	\$7,290,573.76	\$540,573.69	7.41%	\$6,750,000.07	\$2,700,000.03		\$2,700,000.03
Martin	\$87,993.59	\$19,224.85	21.85%	\$68,768.74	\$27,507.50		\$27,507.50
Miami	\$172,089.95	\$23,076.80	13.41%	\$149,013.15	\$59,605.26		\$59,605.26
Monroe	\$950,922.56	\$156,823.77	16.49%	\$794,098.79	\$317,639.52		\$317,639.52
Noble	\$300,814.20	\$61,090.48	20.31%	\$239,723.72	\$95,889.49		\$95,889.49
Ohio	\$33,756.12	\$11,957.99	35.42%	\$21,798.13	\$8,719.25		\$8,719.25
Orange	\$130,237.71	\$19,236.10	14.77%	\$111,001.61	\$44,400.64		\$44,400.64
Owen	\$111,868.24	\$14,544.61	13.00%	\$97,323.63	\$38,929.45		\$38,929.45
Perry	\$82,218.92	\$11,017.97	13.40%	\$71,200.95	\$28,480.38		\$28,480.38
Pike	\$0.00	\$0.00	0.00%	\$0.00	\$0.00		\$0.00
Pulaski	\$95,688.13	\$13,663.21	14.28%	\$82,024.92	\$32,809.97		\$32,809.97
Ripley	\$63,837.31	\$17,065.79	26.73%	\$46,771.52	\$18,708.61		\$18,708.61
Rush	\$107,907.04	\$19,533.44	18.10%	\$88,373.60	\$35,349.44		\$35,349.44
Scott	\$200,109.29	\$19,993.61	9.99%	\$180,115.68	\$72,046.27		\$72,046.27
Shelby	\$214,590.58	\$27,507.27	12.82%	\$187,083.31	\$74,833.32		\$74,833.32
Spencer	\$122,251.94	\$34,228.49	28.00%	\$88,023.45	\$35,209.38		\$35,209.38
Steuben	\$131,105.27	\$38,252.88	29.18%	\$92,852.39	\$37,140.96		\$37,140.96
St. Joseph	\$627,457.91	\$65,667.86	10.47%	\$561,790.05	\$224,716.02		\$224,716.02
Sullivan	\$111,278.21	\$24,588.47	22.10%	\$86,689.74	\$34,675.90		\$34,675.90
Switzerland	\$53,352.30	\$11,884.59	22.28%	\$41,467.71	\$16,587.08		\$16,587.08
Tippecanoe	\$983,223.69	\$138,394.51	14.08%	\$844,829.18	\$337,931.67		\$337,931.67
Union	\$16,858.50	\$2,350.50	13.94%	\$14,508.00	\$5,803.20		\$5,803.20
Vanderburgh	\$946,430.83	\$61,957.27	6.55%	\$884,473.56	\$353,789.42		\$353,789.42
Vigo	\$729,076.70	\$120,513.89	16.53%	\$608,562.81	\$243,425.12		\$243,425.12
Wabash	\$137,084.49	\$21,523.89	15.70%	\$115,560.60	\$46,224.24		\$46,224.24
Warren	\$26,833.50	\$3,808.88	14.19%	\$23,024.62	\$9,209.85		\$9,209.85
Warrick	\$169,550.27	\$22,776.33	13.43%	\$146,773.94	\$58,709.58		\$58,709.58
Washington	\$168,562.07	\$25,750.19	15.28%	\$142,811.87	\$57,124.75		\$57,124.75
WCIPDO	\$184,785.51	\$34,364.15	18.60%	\$150,421.36	\$60,168.54	\$ (508.07)	\$59,660.47
<b>TOTAL</b>					<b>\$9,008,090.10</b>	<b>\$ (1,514.65)</b>	<b>\$9,006,575.45</b>

## 6. At-Risk Youth & Family Pilot Submissions

### a. *Extension of System Navigator Pilot Projects*

Mr. Mason recalled that the Commission has been working with System Navigator Pilot Projects in multiple counties. In one county, the Commission's data reveals an 8% decrease in overall case length and a 30% decrease in the time children are spending outside of the home. At a second site, the preliminary data shows a 25% decrease in overall case length, but he noted there was still insufficient data on length of time children spend outside of the home. The cases need additional time to reach resolution due to the length of typical CHINS and TPR cases.

Because county budgets are due in a few months, Mr. Mason said that the Commission needed to inform the pilots whether the Commission intended to extend the grants. He reiterated that the Commission had approximately \$2.4 million in At-Risk Youth and Family dollars available to spend on programming this biennium. He recommended that the Commission extend the pilot programs for one additional year, through the end of 2024. The estimated cost to extend both pilots for an additional year (assuming some cost increases in 2024) was approximately \$575,000.

Judge Diekhoff moved to adopt Mr. Mason's recommendation. Mr. Hensel seconded the motion. There was no discussion and no objections. The motion carried.

### b. *Medical-Legal Partnership Pilot (Child Advocates & Riley Hospital)*

Mr. Mason noted that across the country, there is a trend to use pre-petition social work and legal efforts to help families avoid DCS involvement. Although the Commission approved this type of pilot program in 2021, so far, no such programs have been realized.

Another approach of even more recent origin has been a partnership between medical legal efforts. Child Advocates, a local non-profit organization, and Riley Hospital are beginning a pilot medical-legal partnership here. The two-year pilot would initially hire a Child Advocates lawyer and social worker and a Riley social worker to provide families involved in Riley's High-Risk Neonatal Clinic with access to legal and social work support to prevent future DCS involvement. Child Advocates has also agreed to accept referrals from outside Riley Hospital as time allows. The proposal provides for a second Riley social

worker to be hired in the second year to allow growth. The two-year request is for a maximum of \$659,981.27.

Mr. Mason recommended that the Commission approve the pilot with the stated maximum budget. Commission staff will continue to finalize financial and data collection details.

Judge Meyer asked where the funds for the pilot would come from. Mr. Mason stated that they would come from the At-Risk Youth and Family fund. Mr. Hensel stated that it sounded like a great program. Judge Meyer moved to approve Mr. Mason's recommendation. Judge Hanlon seconded the motion. There were no objections, and the motion carried.

*c. Child Advocates CHINS & TPR Mediation Proposal*

Child Advocates is also advancing a second program, Mr. Mason stated, that would allow it to hire mediators and a paralegal to mediate CHINS and TPR cases in Hancock and Madison counties. He has some questions about the data collection process, but Commission staff would work with the organization to refine the data collection. He also stated that he did not believe two staff members needed to be hired, and he noted that the organization does not have letters of support from the counties. Nevertheless, he recommended that the Commission approve the concept of the pilot with a maximum budget of \$504,140.76 while the data, financial, and public defender support components are resolved to the Commission's satisfaction.

Judge Meyer said that he would like to see Child Advocates expand the mediation program to additional counties. Mr. Mason agreed, stating that the programs should be open to others also.

Mr. Hensel moved to adopt the staff recommendation. Judge Diekhoff seconded the motion. There were no objections and the motion carried.

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

Mr. Cullen reported that the six Commission appointments to the county public defender boards are consensus candidates. Commission staff are still working to make

appointments in two counties. Mr. Hensel moved to approve all the consensus candidates. Judge Meyer seconded the motion. There were no objections, and the motion carried.

## **9. Approval of Trial Substitution Course**

Mr. Mason reported that an attorney has approached the Commission with a request to approve the 2019 National Defender Training Project's Trial Advocacy Program as a substitute for one of two required felony jury trials required to handle Level 1-4 felonies under Standard E. Mr. Mason recommended that the Commission approve the course to count for one of the two felony jury trials under Standard E.

Rep. Lauer moved to approve the staff recommendation. Judge Diekhoff seconded the motion. There were no objections, and the motion carried.

## **10. Legislative & Policy Updates**

Mr. Cullen first provided a brief overview of the Commission's efforts to fund misdemeanor reimbursement. He noted that the idea was twice approved by House interim committees and once by a Senate interim committee and that the Governor approved it and included it in his budget. Nevertheless, despite the Commission's efforts, including speaking to every member of the House Ways and Means Committee, that committee removed the misdemeanor language and reduced the Commission's overall budget. The Chair of the Ways and Means Committee said it would not be a huge impediment if the provision were added back in during the Senate process, but it was just not one of the House's priorities. The Commission has been working hard in the Senate to restore the language.

In other legislation, Sen. Bohacek has proposed legislation (SB 26) creating a new right to counsel for unlicensed relative caregivers in CHINS/TPR actions. Commission staff believe this would have a minor fiscal impact. Sen. Jon Ford has a Bill (SB 484) that would provide counsel to juveniles fourteen years and older in CHINS/TPR cases. Commission staff is talking to Sen. Ford about running a pilot program due to the larger fiscal and policy impact of SB 484.

Judge Meyer mentioned there was a great article in the Indiana Lawyer discussing Mr. Cullen's work. Mr. Cullen noted that it was a team effort and thanked everyone for their assistance.

Mr. Cullen indicated that the Chief Public Defender Retirement Bill has passed out of the House, having fully funded it, with only one 'no' vote and is working its way through the Senate. The Indiana Prosecuting Attorneys Council, which originally opposed the legislation, now supports it. Mr. Abbs stated he is cautiously optimistic and thanked Mr. Cullen for all his efforts. The Chair stated that he appreciated the table format for the legislation.

## **11. Other Matters**

There were no other matters and no objections to adjournment. The meeting was adjourned at approximately 3:20 p.m.

# INDIANA PUBLIC DEFENDER COMMISSION

June 14, 2023

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)  
Hon. Mary Ellen Diekhoff (remote)  
Hon. Kelsey B. Hanlon (in person)  
Mr. David J. Hensel (in person)  
Sen. Eric Koch (remote)  
Rep. Ryan Lauer (in person)  
Hon. Steven P. Meyer (in person)  
Sen. Gregory G. Taylor (remote)

## **Members absent:**

Ms. Samantha DeWester  
Rep. Ragen Hatcher

## **Staff in attendance:**

Derrick Mason (in person) Andrew Cullen (in person) Andrew Falk (remote) Linda Hunter (in person) Stephanie Lalani (remote) Torrin Liddell (remote) Jennifer Pinkston (remote)

## **Audience members:**

Jim Abbs, Noble County Chief Public Defender and President, Chiefs Association (remote)  
Ray Casanova, Marion County Public Defender Agency (in person)  
Sabra Northam, Hallowell Consultants (remote)  
Steve Owens, Vanderburgh County Chief Public Defender (in person)  
Andrew Scheer, Intern to Andrew Falk (remote)

At 2:01 p.m., Chair Mark Rutherford called the meeting to order. Introductions were made and it was established that a quorum was present.

**1. Approval of Minutes of the March 24, 2023 Meeting**

There were no changes to the minutes. Mr. Hensel moved to approve the minutes. Judge Hanlon seconded the motion. There were no objections, and the motion carried unanimously.

**2. Financial Status of Public Defense Fund & Title IV-E Reimbursements**

Mr. Mason stated that there were more than sufficient funds to make the necessary reimbursements. He called attention to the Title IV-E funds that the Commission is receiving for the counties.

Ms. Corley inquired about certain counties that are not part of the Commission but that are receiving funds to provide Title IV-E data. Mr. Mason responded that incentive funds are being given as a flat fee to courts in five counties that provide data to offset their reporting costs related to Title IV-E data collection.

**3. Fiscal Year 2024 Internal Budget**

Mr. Mason reminded the Commission that since the Commission became independent, it has kept an internal budget. The internal budget is not required but does promote fiscal responsibility.

The 2024 fiscal year includes \$34,073,811 in the general fund and \$7,400,000 in dedicated funds. This does not include the FY2023 funds carried forward. Mr. Mason asked the Commission to approve the FY2024 internal budget of \$1,353,000, as listed in the table below.

Payroll	\$ 1,185,000.00
Travel	\$ 18,000.00
Interagency Charges	\$ 30,000.00
Rentals	\$ 25,000.00
Admin/Ops Supplies/Misc	\$ 45,000.00
Contractual	\$ 50,000.00
Total:	\$ 1,353,000.00

Mr. Mason noted that changes to the internal budget may be necessary during the fiscal year because the agency will be moving to new leased space in December

2023. The current lease expires at the end of 2023 and the new rent will be significantly higher, wherever the agency leases next. There is no available space in the Government Center. To remain in the Commission's current space, the Commission would incur significant increases in costs because the Public Defender Council will no longer be paying for part of the Commission's floor.

The agency is negotiating a lease at 101 West Ohio that will provide lower rent this year and the first part of next year. The Commission will incur costs for moving, buildout, and IOT work. The space will be more appropriately sized for the Commission's needs.

Commission staff also anticipated requesting funds to modernize the county reimbursement request system. Funding for this project is available in part because misdemeanor funding was not authorized. The current system is a significant improvement over the many individual paper pages that was used in the past but is developing bugs because it was not intended to be sent back and forth multiple times every year. Thus, Commission staff is beginning to design an online reporting system that will provide real-time information about caseloads and qualifications. Among others, benefits of this system will include easier attorney qualification tracking and a greater ability to ascertain the counties in which attorneys are working. The Commission will put out an RFP for the work, but it may be less expensive to hire contractors to work with Commission staff, Mr. Mason noted.

On a related front, Paula Diaz, administrative assistant for the Commission, has found a new position with another state agency. Mr. Mason is refining an updated job description for a similar position and will look to hire someone in that role soon.

The Chair asked if there were any questions or concerns regarding the Commission's internal budget. There were none. Judge Meyer moved to approve the budget. Judge Hanlon seconded the motion. There were no objections. The motion carried.

#### **4. Status of County Compliance**

##### ***a. Howard & Vanderburgh County Follow-ups***

At the March meeting, the Commission directed staff to advise Howard County that reimbursement could be suspended if the chief public defender's compensation were not brought into compliance. The county informed Commission staff within the previous week that the Council approved the required supplemental pay. Commission staff will monitor the situation, along with the county's two-year pay parity plan, but it appears that the issues have been resolved.

Ms. Corley invited Mr. Owens, Vanderburgh Chief Public Defender, to attend the meeting and share the challenges faced by the Vanderburgh Public Defender's office. Mr. Mason noted that some of the issues Vanderburgh is facing are also present in other counties on the Ohio River. He said that some of the issues Vanderburgh is facing stem from the fact that few attorneys are willing to work for the salary the county is offering, even if benefits are provided.

Mr. Owens reported that he has been working with the county council for years in an effort to increase pay for his public defenders. The council has largely declined to work with him, and nothing has been done. At the same time, the Vanderburgh Public Defender's Office has been losing attorneys and has had great difficulty hiring new attorneys. Between January and April of this year, the office has lost four experienced murder-qualified attorneys; three went to the Vanderburgh prosecutor's office and the fourth became a staff attorney for the Vanderburgh Circuit court. Mr. Owens has not been able to replace them. The office has had a full-time position open since November and there have been very few applicants.

The problem has now reached a crisis level, Mr. Owens stated. On Monday, June 12, 2023, in one felony court, sixty cases had been assigned to the public defender, but no attorney could be appointed for the individuals because they had already received the maximum number of eligible cases. Mr. Owens expected that number to rise to ninety cases by Friday, June 16. He anticipated that another felony court would have maxed out its attorneys by Friday, June 23. The judges are understandably unhappy with the situation. Both the courts and the county council would like to see caseload caps waived.

Mr. Owens has been working with the Commission to plan for the caseload changes effective January 1, 2024, and anticipates that he will need to hire multiple

new attorneys to meet caseload requirements. At the same time, he cannot find attorneys to fill the openings the office has now. Part of the problem is that Vanderburgh County has a high number of felony filings based on its population. Another component is the antiquated pay structure which rewards time with the county, not legal experience or qualifications, and thus limits pay increases for public defense attorneys. He also noted that with Vanderburgh's distance from law schools, it is harder to recruit new attorneys.

Mr. Owens has proposed reworking the pay structure in cooperation with the prosecutor's office. After talking with Mr. Mason, Mr. Owens is asking his part-time contract attorneys to take additional cases and is paying them hourly. He is contacting attorneys in adjoining counties, but many of them already make more hourly than he would ordinarily pay. He has written to the State Public Defender requesting help, but that office does not ordinarily provide trial counsel.

Mr. Owens reported that some in the county would like to leave the Commission and privatize the entire public defense system. They do not believe it is worth the Commission's requirements to receive forty cents on the dollar.

Judge Hanlon asked how the Commission could help. She observed that with the problem recruiting and retaining attorneys, eliminating caseload limits and not increasing pay would not help with recruitment. She also stated that she believes multiple counties have the same problem and could soon be in the same situation as Vanderburgh County.

Ms. Corley agreed and stated her belief that it is not just a money problem but also an attorney shortage. She recommended that the Public Defender Council, the Commission, the Indiana Prosecuting Attorneys Council (IPAC), and the Supreme Court meet, determine the dimensions of the problem, and begin to determine solutions.

Judge Hanlon inquired whether paying attorneys hourly to make up the difference will help the situation and whether it would be educational to demonstrate the needed funding. Mr. Owens responded that a) the bills would not be seen for a while and b) even then, the costs will come from the supplemental fund, not the general budget, so it will not have a direct impact on the county.

Mr. Cullen called attention to the big picture issue related to the attorney shortage, which the Commission has been stating for several years. He recommended that the Justice Reinvestment Advisory Council form a working group with participants from all the major stakeholders, chaired by one of the Supreme Court justices, that could come up with a solution. He observed that there needs to be pay parity between public defenders, prosecutors, the Department of Child Services, and county court staff.

Mr. Mason stated his recommendation that Vanderburgh County should apply Standard K, which requires a chief public defender to “inform the appropriate judges and refuse to accept the appointment of additional cases” when “in the exercise of his or her best professional judgment . . . the acceptance of additional cases . . . will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.” Mr. Owens said he has told the judges that cases would not be assigned to attorneys. The Chair recalled a time when Marion County was in a similar situation and sent letters to the courts rejecting appointments for every case. Mr. Owens said he could adopt that approach. Mr. Mason added that Mr. Owens could assign cases up to 109% of the allowable caseloads.

Mr. Abbs expressed his belief that the Commission could not address the problem on a county-by-county basis, but instead needed to determine a state-wide solution to a system-wide problem. He is concerned that counties could begin dropping out of the Commission. He believes Mr. Owens is one of the state’s best chief public defenders and Vanderburgh County does not care about losing the Commission’s reimbursement. He argued the Commission needs a way to make counties comply.

It was discussed whether a ninety-day letter would be helpful. Mr. Mason stated that there is not a compliance issue. An ongoing pay parity issue is present, but the Commission has agreed to let the county work that out before 2024. But the Commission could write a letter saying that under Standard K, Mr. Owens is obligated to reject additional assignments. Mr. Owens said he would appreciate such a letter. Mr. Mason promised to send such a letter.

*b. Individual and Multi-County Compliance Updates*

Mr. Mason stated there were two multicounty attorney issues this quarter. One attorney, Calvin Miller, has been working in seven counties and had a caseload level of 1.476 this quarter (which is down from 1.61 the previous quarter). Mr. Miller has dropped one county contract, will decline cases from a second, and is managing his own list of cases to help come into compliance.

A second attorney, Earlford McNaughton, is at 1.138 between Steuben and LaGrange counties. Steuben County is using Mr. McNaughton significantly more, and it has multiple attorneys out of compliance, for the second quarter in a row. Mr. Mason recommended that the Commission send a ninety-day letter to Steuben County. Judge Hanlon moved to send the letter. Sen Taylor seconded the motion. There were no objections. The motion carried.

**5. Requests for Reimbursement**

*a. 50% Reimbursement in Death Penalty Cases*

Mr. Mason informed the Commission that there are two new capital cases in Wayne and Madison Counties. Madison's request was missing some information and some requests were untimely, but since it is their first request, he was not concerned. He also noted that there appears to be a plea deal in Clinton County, but until that is final, the reimbursements are still eligible for a fifty-percent reimbursement. He recommended full reimbursement for all requests.

# INDIANA PUBLIC DEFENDER COMMISSION

## Reimbursement Requests in Capital Cases

June 14, 2023

COUNTY	DEFENDANT	TOTAL
Clinton	Ferrell	<b>\$32,048.49</b>
Madison	Boards	<b>\$14,332.35</b>
Marion	Dorsey	<b>\$4,227.50</b>
Wayne	Lee	<b>\$3,363.90</b>
<b>TOTAL</b>		<b>\$53,972.24</b>

## LATE CLAIMS

Madison	Boards	<b>\$8,907.45</b>
<b>TOTAL</b>		<b>\$62,879.69</b>

Ms. Corley moved to approve the requests. Mr. Hensel seconded the motion. There were no objections. The motion carried.

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

Mr. Mason reported that there a few adjustments to the non-capital reimbursement requests due to adjustments in several counties. The total reimbursement request for the first quarter of 2023 is \$ 8,969,769.35 (see table in Appendix 1). Judge Meyer moved to approve the requests. Judge Hanlon seconded the motion. There were no objections. The motion carried.

## **6. New Standard Request: Cont'd From Prior Mtg: Marion County Support Staff Pay Parity Request**

Mr. Mason reminded the Commission that this issue was tabled pending the Marion County Public Defender Agency's move to the new Justice Center. The related topic of support staff ratio requirements was similarly tabled until the September meeting. He advised that from what he had heard from Marion County, they were more interested in amending their comprehensive plan instead of pushing for a new standard. At the previous Commission meeting, there was some concern that it could be problematic for the Commission to impose ninety-day letters for violations of county comprehensive plans if there were no underlying Commission

Standard. There was also opposition to or wariness of a state-wide staffing standard. To address these concerns, Commission staff drafted and proposed a new Standard O, which supported a county board finding a need for and adopting a staff pay parity requirement. The proposed Standard O read:

**Standard O. Compensation of Support Staff.** The comprehensive plan may, at the public defender board's discretion, require that all full-time, salaried public defender support staff receive the same salaries and compensation provided to the support staff in similar positions with similar experience within the prosecutor's office or elsewhere within the county.

Judge Hanlon stated that she believed the proposed Standard O was a brilliant solution. She appreciated that it allowed local boards to make the decision. Ms. Corley asked if Standard O would resolve Marion County's concerns. Mr. Mason said he would let Marion County answer that question.

Mr. Casanova thanked the Commission for tabling the issue. He said he just recently saw the proposed Standard O, but said he thought it would be valuable to the county. The comprehensive salary study had been helpful, but the Marion County staff are still struggling with pay parity. He appreciated that the new standard extended beyond the prosecutor's office and was therefore in favor of adopting it. Mr. Mason agreed that the proposed standard would allow it to extend beyond the prosecutor's office, and the included commentary explained why.

Judge Hanlon moved to adopt Standard O. Mr. Hensel seconded the motion. There was no further discussion and no objections. The motion carried.

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

Mr. Cullen reported that staff were recommending five consensus candidates. Staff recommended reappointing current members Heather Schuh-Ogle and Julie Schmitt in Brown and Spencer counties, respectively, and appointing Bill Aspy, Judge (Ret.) J. Scott Vanderbeck, and Auditor Lonnie Stroud in Blackford, LaGrange, and Orange counties, respectively.

After it was noted that there has been a series of resignations by board members in Orange County, Ms. Corley inquired whether there was a pattern for why people were resigning in Orange County. Mr. Cullen responded that it was a variety of reasons, but nothing bad or related to local operations. Ms. Corley moved to approve the five consensus candidates. Sen. Taylor seconded the motion. There were no objections. The motion carried.

## **8. Legislative & Policy Updates**

Mr. Cullen first noted that there was excellent collaboration between the Chief Public Defender's Association, the Public Defender Council, and IPAC on legislation that would have permitted public defender participation in Prosecuting Attorneys Retirement Fund (PARF). After initial success in the House, however, it died in Senate Appropriations.

Similarly, although misdemeanor reimbursement approval and funding was included in the Governor's budget, it was not approved in either house. Ultimately, it appears Senate leadership was not in favor of the legislation. Mr. Cullen stated his belief that the Commission needs to identify and pursue a new strategy. Judge Hanlon asked whether the Commission could have obtained one of the pieces of legislation if only one had been sought. Mr. Cullen responded that he did not believe so.

Sen. Koch stated that the outcome was not result of lack of excellent work by Mr. Cullen and Ms. Sabra Northam. He noted that toward the end of Session, the team crafted and proposed compromise language, but not even what he thought was good compromise language could find traction. He reiterated that the legislative team did very good work. Mr. Cullen thanked Sen. Koch for all his help and particularly for his recommendations as to what they should try to do or propose.

## **9. Other Matters**

By consensus, the meeting was adjourned at 3:30 p.m.

# Appendix 1

## INDIANA PUBLIC DEFENDER COMMISSION

First Quarter 2023 Requests for Reimbursement in Non-Capital Cases 6/14/23

County	Total Expenditure	Non-Reimb. Adjustment	% Adjust	Eligible Expenditure	40% Reimburse d	Prior Quarter Adj.	Total Payment
Adams	\$138,905.34	\$21,966.95	15.81%	\$116,938.39	\$46,775.36		\$46,775.36
Allen	\$1,229,780.82	\$78,585.50	6.39%	\$1,151,195.32	\$460,478.13		\$460,478.13
Benton	\$14,935.63	\$3,930.69	26.32%	\$11,004.94	\$4,401.98		\$4,401.98
Blackford	\$58,204.50	\$11,161.35	19.18%	\$47,043.15	\$18,817.26		\$18,817.26
Brown	\$77,924.44	\$23,087.74	29.63%	\$54,836.70	\$21,934.68		\$21,934.68
Carroll	\$88,518.57	\$15,092.32	17.05%	\$73,426.25	\$29,370.50		\$29,370.50
Cass	\$211,787.23	\$29,208.30	13.79%	\$182,578.93	\$73,031.57		\$73,031.57
Clark	\$446,572.27	\$52,699.15	11.80%	\$393,873.12	\$157,549.25	-\$585.19	\$156,964.06
Clinton	\$81,928.48	\$14,302.52	17.46%	\$67,625.96	\$27,050.38		\$27,050.38
Crawford	\$39,059.60	\$12,349.47	31.62%	\$26,710.13	\$10,684.05		\$10,684.05
Decatur	\$124,873.72	\$23,945.26	19.18%	\$100,928.46	\$40,371.38	-\$1,612.74	\$38,758.64
DeKalb	\$221,714.32	\$19,437.32	8.77%	\$202,277.00	\$80,910.80		\$80,910.80
Delaware	\$483,605.85	\$2,355.55	0.49%	\$481,250.30	\$192,500.12		\$192,500.12
Elkhart	\$869,283.62	\$129,746.32	14.93%	\$739,537.30	\$295,814.92		\$295,814.92
Fayette	\$100,844.54	\$20,675.67	20.50%	\$80,168.87	\$32,067.55		\$32,067.55
Floyd	\$306,067.99	\$38,182.67	12.48%	\$267,885.32	\$107,154.13		\$107,154.13
Fulton	\$97,726.68	\$28,994.66	29.67%	\$68,732.02	\$27,492.81		\$27,492.81
Gibson	\$185,137.72	\$32,660.33	17.64%	\$152,477.39	\$60,990.95		\$60,990.95
Grant	\$303,925.32	\$2,920.88	0.96%	\$301,004.44	\$120,401.78		\$120,401.78
Greene	\$179,654.96	\$24,346.78	13.55%	\$155,308.18	\$62,123.27		\$62,123.27
Hancock	\$264,236.68	\$18,287.21	6.92%	\$245,949.47	\$98,379.79		\$98,379.79
Harrison	\$185,945.00	\$19,388.32	10.43%	\$166,556.68	\$66,622.67	-\$948.03	\$65,674.64
Hendricks	\$522,693.28	\$82,568.82	15.80%	\$440,124.46	\$176,049.78		\$176,049.78
Howard	\$482,954.84	\$45,129.94	9.34%	\$437,824.90	\$175,129.96	-\$12.45	\$175,117.51
Jackson	\$270,156.36	\$12,568.93	4.65%	\$257,587.43	\$103,034.97		\$103,034.97
Jasper	\$76,120.24	\$25,183.12	33.08%	\$50,937.12	\$20,374.85		\$20,374.85
Jay	\$133,884.88	\$18,669.57	13.94%	\$115,215.31	\$46,086.13		\$46,086.13
Jefferson	\$212,098.72	\$20,379.96	9.61%	\$191,718.77	\$76,687.51		\$76,687.51
Jennings	\$125,823.28	\$9,413.57	7.48%	\$116,409.71	\$46,563.88		\$46,563.88
Knox	\$219,737.33	\$30,414.69	13.84%	\$189,322.64	\$75,729.06		\$75,729.06
Kosciusko	\$275,401.28	\$94,382.83	34.27%	\$181,018.45	\$72,407.38		\$72,407.38
LaGrange	\$77,471.71	\$23,094.30	29.81%	\$54,377.41	\$21,750.96		\$21,750.96
Lake	\$1,649,078.40	\$7,360.83	0.45%	\$1,641,717.57	\$656,687.03		\$656,687.03
LaPorte	\$285,426.43	\$31,250.06	10.95%	\$254,176.37	\$101,670.55		\$101,670.55
Lawrence	\$269,730.91	\$34,520.15	12.80%	\$235,210.76	\$94,084.30		\$94,084.30
Madison	\$598,138.68	\$11,745.19	1.96%	\$586,393.49	\$234,557.39		\$234,557.39
Marion	\$7,224,056.14	\$668,090.79	9.25%	\$6,555,965.35	\$2,622,386.14		\$2,622,386.14
Martin	\$44,518.55	\$9,197.99	20.66%	\$35,320.57	\$14,128.23		\$14,128.23
Miami	\$195,147.92	\$27,303.52	13.99%	\$167,844.40	\$67,137.76		\$67,137.76
Monroe	\$681,855.09	\$114,083.35	16.73%	\$567,771.74	\$227,108.70		\$227,108.70
Noble	\$301,661.29	\$46,640.18	15.46%	\$255,021.11	\$102,008.44		\$102,008.44
Ohio	\$23,138.16	\$1,663.53	7.19%	\$21,474.63	\$8,589.85		\$8,589.85

Orange	\$77,282.56	\$14,980.92	19.38%	\$62,301.64	\$24,920.66		\$24,920.66
Owen	\$75,628.74	\$17,440.25	23.06%	\$58,188.49	\$23,275.40		\$23,275.40
Perry	\$68,179.29	\$4,014.58	5.89%	\$64,164.71	\$25,665.89		\$25,665.89
Pike	\$34,980.44	\$1,013.02	2.90%	\$33,967.42	\$13,586.97	-\$18.00	\$13,568.97
Pulaski	\$68,391.25	\$17,847.96	26.10%	\$50,543.29	\$20,217.32		\$20,217.32
Ripley	\$55,497.95	\$13,668.46	24.63%	\$41,829.49	\$16,731.80		\$16,731.80
Rush	\$136,462.97	\$29,343.99	21.50%	\$107,118.98	\$42,847.59	-\$1,251.22	\$41,596.37
Scott	\$108,826.17	\$13,381.37	12.30%	\$95,444.80	\$38,177.92		\$38,177.92
Shelby	\$145,593.13	\$27,657.35	19.00%	\$117,935.78	\$47,174.31		\$47,174.31
Spencer	\$97,588.11	\$17,206.82	17.63%	\$80,381.29	\$32,152.51		\$32,152.51
Steuben	\$104,762.18	\$29,736.19	28.38%	\$75,025.99	\$30,010.40		\$30,010.40
StJoseph	\$865,659.65	\$94,320.83	10.90%	\$771,338.82	\$308,535.53		\$308,535.53
Sullivan	\$50,476.71	\$4,715.39	9.34%	\$45,761.32	\$18,304.53		\$18,304.53
Switzerland	\$48,613.96	\$12,784.03	26.30%	\$35,829.93	\$14,331.97		\$14,331.97
Tippecanoe	\$1,174,232.37	\$153,679.09	13.09%	\$1,020,553.28	\$408,221.31		\$408,221.31
Union	\$26,768.50	\$6,208.30	23.19%	\$20,560.20	\$8,224.08		\$8,224.08
Vanderburgh	\$923,101.30	\$49,731.61	5.39%	\$873,369.69	\$349,347.88		\$349,347.88
Vigo	\$985,230.18	\$145,144.79	14.73%	\$840,085.39	\$336,034.16		\$336,034.16
Wabash	\$106,873.46	\$17,435.97	16.31%	\$89,437.49	\$35,775.00		\$35,775.00
Warren	\$21,143.44	\$10,558.26	49.94%	\$10,585.18	\$4,234.07		\$4,234.07
Warrick	\$198,710.68	\$22,786.31	11.47%	\$175,924.37	\$70,369.75		\$70,369.75
Washington	\$189,641.72	\$26,120.34	13.77%	\$163,521.38	\$65,408.55		\$65,408.55
WCIPDO	\$210,875.72	\$51,992.77	24.66%	\$158,882.95	\$63,553.18		\$63,553.18
<b>TOTAL</b>					<b>\$8,974,196.98</b>	<b>\$(4,427.63)</b>	<b>\$8,969,769.35</b>

**INDIANA PUBLIC DEFENDER COMMISSION**

**September 20, 2023**

**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 (in person)  
Ms. Samantha DeWester (in person)  
Hon. Mary Ellen Diekhoff (in person)  
Hon. Kelsey B. Hanlon (in person)  
Mr. David J. Hensel (remote)  
Sen. Eric Koch (in person)

**Members absent:**

Rep. Ragen Hatcher  
Rep. Ryan Lauer  
Hon. Steven P. Meyer  
Sen. Gregory G. Taylor

**Staff in attendance:**

Derrick Mason (in person)  
Andrew Cullen (in person)  
Andrew Falk (remote)  
Linda Hunter (in person)  
Stephanie Lalani (remote)  
Torrin Liddell (remote)  
Jennifer Pinkston (remote)  
Tristan Snell (in person)

**Audience members:**

Jim Abbs, Noble County Chief Public  
Defender and President, Chiefs  
Association (remote)  
Ray Casanova, Marion County Public  
Defender Agency (in person)  
Amy Karozos, State Public Defender  
(remote)  
Lucy Lynch, Legislative Assistant to  
Sen. Koch (in person)  
Sabra Northam, Hallowell Consultants  
(remote)  
Andrew Vandembosch, Howard  
County Chief Public Defender  
(remote)

At 2:03 p.m., Chair Mark Rutherford called the meeting to order. Introductions were made and it was established that a quorum was present.

**1. Approval of Minutes of the June 14, 2023, Meeting**

There were no changes to the minutes. The minutes were approved unanimously.

**2. Approval of Amended Marion County Comprehensive Plan (Complete Revision)**

The Chair noted that the Marion County Public Defender Agency (“MCPDA”) has done a lot of work on their revised plan, which had not been revised since 1993. Mr. Mason noted that the entire plan is rewritten. He appreciated all the county’s hard work.

Mr. Mason first noted that the plan does implement the Commission’s new, optional Standard O. Then he directed the Commission's attention to a few specific provisions of the proposed amended plan. First, Section B.f. included making the agency independent from other county agencies and clarifies the chief public defender is the chief executive of the agency and in charge of their own human resources. MCPDA requested the provision because they wanted to put the office on equal footing with the prosecutor’s office. Mr. Mason noted that the provision does not contradict the Commission’s standards but merely went beyond them. Ray Casanova stated that it was critical to maintain pay parity with the prosecutor’s office. He noted that it can be difficult to persuade HR to approve pay raises and job descriptions. He stated that it would never be the County’s intention to come first to the Commission. Instead, the County was working to change the county ordinance to permit independence from HR.

Judge Hanlon asked what the MCPDA board members thought of the proposal, and in particular those appointed by the county executive. Mr. Casanova responded that it was approved unanimously without comment. He knew that Marion County Chief Public Defender Bob Hill met with each member of the county board individually to discuss the changes, but Mr. Casanova did not know the substance of those meetings.

Ms. DeWester moved to approve the language of Section B.f. Judge Hanlon seconded the motion. The motion carried unanimously.

Next, Mr. Mason explained that Section H summarized the Commission standard regarding Standard G. He proposed that an additional sentence be added as Section H.c., which would clarify that part-time public defenders would “comply with the minimum salary requirements set by the Indiana Public Defender Commission for part-time positions without an equivalent position in the prosecutor’s office.” MCPDA agreed to this change.

Ms. DeWester moved to approve the amended language of Section H. Judge Diekhoff seconded the motion. The motion carried unanimously.

Finally, Mr. Mason called attention to Section N. When Mr. Mason expressed concerns to the MCPDA about their original draft of Section N, the county revised it, but subsequently decided they wanted to go back to their original version. Mr. Mason provided the Commission with both the original and the revised language, as well as the Commission’s Standard N (upon which Section N was based) and typical language from other comprehensive plans. At issue was the source of funding for expenses for experts and depositions for individuals retaining private counsel, and he recommended that the Commission go back to the intent of Standard N and follow the revised version. Mr. Mason observed that the Commission could approve MCPDA’s original draft or approve the plan and send this section back to the county for further revision.

Mr. Casanova responded that the MCPDA believe it was the duty of the courts, not the county public defender, to pay for such expenses, and that it is very difficult for the county public defender to budget for this type of expenses. He noted that these expenses tend to be very large and that such requests threaten funding for the public defender’s attorneys. He also argued there is significant room for abuse of the system. Finally, he said the county’s language allowed the courts to fund the expenses.

Ms. Corley asked if the MCPDA is reimbursed for expenses in this category. Mr. Casanova answered that it is not automatic. She also asked how the need is demonstrated, and Mr. Casanova described the process of review and how experts are

consulted and reduced fees are requested. Mr. Casanova clarified that where investigators are requested, they must be selected from the MCPDA investigators.

Ms. DeWester asked what would happen if a judge ordered the MCPDA to pay such fees despite what the comprehensive plan provided. Mr. Mason responded that that was why Standard N contains the provisions it does – it allows the Commission to withhold reimbursement if the system were routinely abused. Mr. Mason added that he has testified on this matter regarding who determines indigency and that the language of Standard N is crucial. He also recommended that language limiting experts and investigators to in-house not be included.

Mr. Abbs noted that this issue arises not only in Marion County but also in smaller counties.

Ms. DeWester commented that she understood that indigent individuals should not be allowed to demand the highest-paid experts or investigators but should use the same type of experts as the public defender's office.

Judge Hanlon inquired when this type of situation arises. Judge Diekhoff explained that it arises when private counsel wants to hire an expert, but the client can't afford the expert. She stated she does not often approve this type of expense.

There was a general discussion about the instances in which this type of situation arises. Mr. Mason read from the commentary to Standard N, noting that it is a cost-saving measure for counties when an individual may afford a private counsel but cannot afford expert or investigative services. One option would be for private counsel to withdraw so the court could appoint both a public defender and the needed additional services. Standard N allows for a court to approve just the additional services while maintaining private counsel. This provision mirrors similar federal procedures.

Ms. DeWester moved to adopt Section N in its original form. Judge Diekhoff asked who would fund it, because in her experience, the courts do not have the funds to pay for such expenses. She was concerned that requests for experts would be denied because there would not be funding in court budgets for them. Ms. DeWester responded it would have to come from the county's budget. Ms. DeWester suggested

that the General Assembly should address it. Mr. Casanova said that courts can replenish its budget for circumstances such as this. Judge Diekhoff said that even if that were true, it would not happen in her county or in many other counties. Judge Hanlon wondered whether the supplemental fund could be tapped. Mr. Mason responded that it could be, but only if the county had already provided enough funding generally for the year.

Mr. Mason recommended that Section N be tabled until sources of funding could be resolved and that everything else be approved. Ms. DeWester withdrew her motion. Judge Hanlon moved to approve the comprehensive plan except for Section N to allow for additional research and drafting for that Section, which would be discussed at the December meeting. Sen. Koch seconded the motion. The motion carried unanimously.

### **3. Financial Status of Public Defense Fund & Title IV-E Reimbursements**

Mr. Mason first updated the Commission regarding the At-Risk Youth and Family fund. The Marion County juvenile program was very successful, so to help the program be implemented, it was being renewed for another year at 50% funding for 2024. Monroe and Vigo counties were System Navigator pilots, and those pilots are being extended for another year to allow data from those programs to be collected. The initial data from those counties is very promising.

He also reminded the Commission that Commission staff will be moving in December or January. The internal budget may need to be adjusted to pay for internet, which the Commission has not had to pay for previously.

Mr. Mason stated that there were more than sufficient funds to make the necessary reimbursements.

### **4. Status of County Compliance:**

*a. Howard, Vanderburgh, and Steuben Follow-Ups & Monroe County*

### Howard County

Mr. Mason reported that he had anticipated discussing an extension for another year to reach pay parity, but the Howard County public defender officer just informed the Commission that the County Council decided to fully fund the public defender salaries for 2024.

### Vanderburgh County

Steven Owens, the Chief Public Defender for Vanderburgh County, informed Commission staff that the county would not finalize budgets until September 29, 2023, and neither he nor Commission staff have heard anything from the county. After the dire news at the June meeting, where the Commission was informed many defendants had not been appointed counsel due to counsel reaching maximum caseloads, Commission staff sent a letter advising Vanderburgh County to reject instead of accepting cases. The chief public defender has been complying with that approach. In addition, the State Public Defender has been providing hourly counsel appointments to the county, which has enabled compliance.

### Steuben County

Commission staff sent a 90-day letter to Steuben County regarding caseload noncompliance, and the county has approved the immediate hiring of two additional, part-time public defender positions. Mr. Mason noted that these hires would not immediately resolve the compliance issue, but that this should be sufficient to ultimately achieve compliance.

### Monroe County

Mr. Mason stated that he has spoken to Judge Diekhoff and Monroe County, which has been assigning cases to unqualified attorneys and to an attorney who has not submitted qualifications to the Commission. All these issues were being addressed, in part by providing an updated attorney list to the judges.

*b. Individual and Multi-County Compliance Updates*

Mr. Mason reported that a few counties have compliance issues, but solutions have been addressed. Many of the multi-county issues are due to lack of coordination between counties. He did not recommend any Commission action.

**5. Requests for Reimbursement**

*a. 50% Reimbursement in Death Penalty Cases*

Mr. Mason stated there were \$133,983.90 in death penalty requests for which he would be seeking reimbursement (see table below). Clinton County has reached a deal removing the death penalty in the Ferrell case, so that case will be winding down. Another county is starting a death penalty case, but private counsel has been retained there and the Commission may not see requests for reimbursement. Wayne County is just starting. Marion County's is unusual in that because the case is old and the hourly rates are relatively low. Requests were adjusted due to typographical errors and hour rate errors. He recommended reimbursement for all requests, as adjusted.

**INDIANA PUBLIC DEFENDER COMMISSION**

Reimbursement Requests in Capital Cases

September 20, 2023

COUNTY	DEFENDANT	TOTAL
Clinton	Ferrell	\$60,849.90
Madison	Boards	\$19,410.60
Marion	Adams	\$221.50
Wayne	Lee	\$53,501.90
<b>TOTAL</b>		<b>\$133,983.90</b>

It was moved and seconded to approve the requests. The motion carried unanimously.

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

Mr. Mason reported a few adjustments to the non-capital reimbursement requests due to adjustments in several counties. The total reimbursement request for

the second quarter of 2023 was \$ 8,661,636.71 (see table in Appendix 1). There were no objections. The reimbursements were approved.

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

Mr. Cullen reported that Commission staff were recommending the reappointment in Decatur County of William Smith, who has been an excellent board member, and a new candidate in Pulaski County, Anne Scott, a social worker highly recommended by the judges. Judge Hanlon moved to approve the two appointments. Sen. Koch seconded the motion. The motion carried unanimously.

## **7. Legislative & Policy Updates**

Mr. Cullen congratulated Mr. Hensel for receiving the Leadership in Law award from the Indiana Lawyer. Mr. Cullen noted that the attorney shortage article is gaining traction and receiving additional attention.

Regarding the 2024 legislative agenda, Mr. Cullen noted that he and Sabra Northam understand what happened in 2023; they now need to decide what to do about it going forward. They are working with legislators to propose a limited-scope misdemeanor reimbursement pilot program using existing funds. That bill would also be used as a vehicle to change the Commission's name. If approved, staff will design a program for presentation to the Commission for final approval at the December meeting. Sen. Koch noted that measurable outcomes are the key.

Judge Diekhoff moved to adopt this legislative agenda. Ms. DeWester seconded the motion. The motion passed unanimously.

## **8. National Workload Standards, LWOP & Criminal Rule 24 (Death Penalty Standard) Updates**

Mr. Mason stated that this agenda item was largely designed to help prepare the Commission for anticipated discussion at the December 2023 meeting. He provided a brief background on the National Workload Standards, which were just released.

Mr. Mason reminded the Commission that one of the Commission's duties is to recommend standards for public representation in death penalty cases. The Public Defender Council Board has identified a concern about the lack of death penalty qualified attorneys in Indiana, and it created an ad hoc death penalty committee to consider the issue. One item of low-hanging fruit that Commission staff was prepared to recommend to the Commission concerned the standard death penalty hourly rate. Criminal Rule 24 provides that new hourly rates are only effective on newly filed or remanded cases. He noted that the Commission is reimbursing Marion County for death penalty work performed in a current case at a rate of \$70/hour – the rate in effect in 2001. He recommended that the Commission approve allowing the death penalty rate to adjust during the life of the case. It was moved and seconded to adopt that recommendation. The motion carried unanimously.

Mr. Mason noted there are ambiguities in C.R. 24 as well. For example, an issue arose in Marion County where the county sought to certify an attorney whose experience on a long-running current case was equated to “prior experience.” Mr. Mason recommended that that experience qualify the attorney. There were no objections to finding significant experience on a current case acceptable to allow an attorney to become certified to accept death penalty cases.

Finally, Mr. Mason observed that the Commission does not have a qualification standard for Life Without Parole (LWOP) representation. He noted that the Commission has received a request that it recommend to the Supreme Court that it require the same qualifications to represent a person in an LWOP as in a death penalty case. Judge Diekhoff opined that there should be a court rule regarding LWOP qualifications because she believes the state will be seeing a rise in LWOP cases instead of death penalty cases. She said the Commission should draft and use a rule as a backup, but the court rule should be priority. In response to a question from Ms. Corley, Mr. Mason stated that the Commission could create a weighting standard, providing how much an LWOP case is worth for caseload compliance issues, but the Commission should not have a standard for LWOP qualifications; that is the role of the Supreme Court, which has established the standard for death penalty

qualifications. Mr. Abbs commented that he believed it should be a court rule. Mr. Mason stated that this issue would be discussed further at the December meeting.

**9. Other Matters**

By consensus, the meeting was adjourned at 3:30.

## Appendix 1

# INDIANA PUBLIC DEFENDER COMMISSION

Second Quarter 2023 Requests for Reimbursement in Non-Capital Cases 9/20/23

County	Total Expenditure	Non-Reimb. Adjustment	% Adjust	Eligible Expenditure	40% Reimbursed	Prior Quarter Adj.	Total Payment
Adams	\$122,941.60	\$20,923.41	17.02%	\$102,018.19	\$40,807.27		\$40,807.27
Allen	\$1,358,268.34	\$90,295.17	6.65%	\$1,267,973.17	\$507,189.27		\$507,189.27
Benton	\$35,285.40	\$4,034.76	11.43%	\$31,250.64	\$12,500.26		\$12,500.26
Blackford	\$54,352.00	\$5,436.79	10.00%	\$48,915.21	\$19,566.09		\$19,566.09
Brown	\$86,258.32	\$24,933.49	28.91%	\$61,324.83	\$24,529.93		\$24,529.93
Carroll	\$86,440.80	\$16,835.47	19.48%	\$69,605.33	\$27,842.13		\$27,842.13
Cass	\$187,928.98	\$29,679.81	15.79%	\$158,249.17	\$63,299.67	-\$8,403.00	\$54,896.67
Clark	\$488,105.76	\$30,411.59	6.23%	\$457,694.17	\$183,077.67		\$183,077.67
Clinton	\$110,691.27	\$20,834.34	18.82%	\$89,856.93	\$35,942.77		\$35,942.77
Crawford	\$39,568.36	\$10,468.05	26.46%	\$29,100.31	\$11,640.12		\$11,640.12
Decatur	\$118,607.84	\$21,778.26	18.36%	\$96,829.58	\$38,731.83		\$38,731.83
DeKalb	\$255,319.79	\$23,231.80	9.10%	\$232,087.99	\$92,835.20		\$92,835.20
Delaware	\$422,937.20	\$6,222.78	1.47%	\$416,714.41	\$166,685.76		\$166,685.76
Elkhart	\$947,728.14	\$162,219.37	17.12%	\$785,508.77	\$314,203.51		\$314,203.51
Fayette	\$114,361.11	\$15,525.15	13.58%	\$98,835.96	\$39,534.39		\$39,534.39
Floyd	\$304,328.77	\$42,328.76	13.91%	\$262,000.01	\$104,800.01		\$104,800.01
Fulton	\$90,873.95	\$35,872.51	39.48%	\$55,001.44	\$22,000.57		\$22,000.57
Gibson	\$199,798.98	\$38,667.69	19.35%	\$161,131.29	\$64,452.51		\$64,452.51
Grant	\$285,683.38	\$5,836.36	2.04%	\$279,847.02	\$111,938.81		\$111,938.81
Greene	\$189,729.35	\$35,504.68	18.71%	\$154,224.67	\$61,689.87		\$61,689.87
Hancock	\$255,768.38	\$16,341.24	6.39%	\$239,427.14	\$95,770.86		\$95,770.86
Harrison	\$191,178.53	\$19,880.66	10.40%	\$171,297.87	\$68,519.15		\$68,519.15
Hendricks	\$528,515.27	\$77,556.76	14.67%	\$450,958.51	\$180,383.41		\$180,383.41
Howard	\$567,307.13	\$47,338.58	8.34%	\$519,968.55	\$207,987.42		\$207,987.42
Jackson	\$275,682.05	\$12,434.13	4.51%	\$263,247.92	\$105,299.17		\$105,299.17
Jasper	\$118,317.00	\$34,983.08	29.57%	\$83,333.92	\$33,333.57		\$33,333.57
Jay	\$159,057.44	\$21,986.88	13.82%	\$137,070.56	\$54,828.22		\$54,828.22
Jefferson	\$245,839.19	\$56,763.69	23.09%	\$189,075.50	\$75,630.20		\$75,630.20
Jennings	\$120,410.72	\$9,115.62	7.57%	\$111,295.10	\$44,518.04		\$44,518.04
Knox	\$254,209.95	\$38,744.77	15.24%	\$215,465.18	\$86,186.07		\$86,186.07
Kosciusko	\$249,345.79	\$79,808.75	32.01%	\$169,537.04	\$67,814.81		\$67,814.81
LaGrange	\$114,792.14	\$22,186.82	19.33%	\$92,605.32	\$37,042.13		\$37,042.13
Lake	\$1,507,885.93	\$8,762.92	0.58%	\$1,499,123.01	\$599,649.20	-\$109.43	\$599,539.77
LaPorte	\$283,424.62	\$29,801.44	10.51%	\$253,623.18	\$101,449.27		\$101,449.27
Lawrence	\$268,989.81	\$32,983.29	12.26%	\$236,006.52	\$94,402.61		\$94,402.61
Madison	\$556,878.34	\$34,747.87	6.24%	\$522,130.47	\$208,852.19		\$208,852.19
Marion	\$6,320,567.20	\$635,248.70	10.05%	\$5,685,318.50	\$2,274,127.40		\$2,274,127.40

Martin	\$100,018.98	\$13,161.70	13.16%	\$86,857.28	\$34,742.91		\$34,742.91
Miami	\$175,098.10	\$23,076.80	13.18%	\$152,021.30	\$60,808.52		\$60,808.52
Monroe	\$687,499.37	\$134,253.89	19.53%	\$553,245.48	\$221,298.19		\$221,298.19
Noble	\$331,082.15	\$50,751.76	15.33%	\$280,330.39	\$112,132.16	-\$14.40	\$112,117.76
Ohio	\$23,271.29	\$5,940.20	25.53%	\$17,331.09	\$6,932.44		\$6,932.44
Orange	\$124,343.37	\$17,995.72	14.47%	\$106,347.65	\$42,539.06		\$42,539.06
Owen	\$77,765.11	\$13,153.96	16.91%	\$64,611.15	\$25,844.46		\$25,844.46
Perry	\$73,750.31	\$10,371.26	14.06%	\$63,379.05	\$25,351.62		\$25,351.62
Pike	\$51,856.77	\$1,604.90	3.09%	\$50,251.87	\$20,100.75		\$20,100.75
Pulaski	\$107,014.05	\$15,787.32	14.75%	\$91,226.73	\$36,490.69		\$36,490.69
Ripley	\$63,749.78	\$9,683.21	15.19%	\$54,066.57	\$21,626.63		\$21,626.63
Rush	\$107,545.52	\$18,433.49	17.14%	\$89,112.03	\$35,644.81		\$35,644.81
Scott	\$160,415.02	\$19,604.79	12.22%	\$140,810.23	\$56,324.09		\$56,324.09
Shelby	\$168,811.65	\$29,670.80	17.58%	\$139,140.85	\$55,656.34		\$55,656.34
Spencer	\$133,702.72	\$31,277.32	23.39%	\$102,425.40	\$40,970.16		\$40,970.16
Steuben	\$140,038.30	\$44,109.07	31.50%	\$95,929.23	\$38,371.69		\$38,371.69
StJoseph	\$792,029.11	\$85,615.37	10.81%	\$706,413.74	\$282,565.49		\$282,565.49
Sullivan	\$111,920.57	\$22,543.84	20.14%	\$89,376.73	\$35,750.69		\$35,750.69
Switzerland	\$31,610.57	\$6,540.00	20.69%	\$25,070.57	\$10,028.23		\$10,028.23
Tippecanoe	\$1,059,085.05	\$143,800.05	13.58%	\$915,285.00	\$366,114.00		\$366,114.00
Union	\$16,230.95	\$2,354.20	14.50%	\$13,876.75	\$5,550.70		\$5,550.70
Vanderburgh	\$908,361.77	\$56,759.95	6.25%	\$851,601.82	\$340,640.73		\$340,640.73
Vigo	\$858,777.24	\$133,114.94	15.50%	\$725,662.30	\$290,264.92		\$290,264.92
Wabash	\$131,360.04	\$23,507.04	17.90%	\$107,853.00	\$43,141.20		\$43,141.20
Warren	\$18,015.04	\$6,759.92	37.52%	\$11,255.12	\$4,502.05		\$4,502.05
Warrick	\$189,540.67	\$32,467.60	17.13%	\$157,073.07	\$62,829.23		\$62,829.23
Washington	\$165,260.82	\$21,817.14	13.20%	\$143,443.68	\$57,377.47		\$57,377.47
WCIPDO	\$171,028.11	\$27,270.74	15.95%	\$143,757.37	\$57,502.95		\$57,502.95
TOTAL	\$24,496,561.26	\$2,821,152.42	\$10.09	\$21,675,408.83	\$8,670,163.54	-\$8,526.83	<b>\$8,661,636.71</b>

