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Public Defender Commission

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April 2020 Volume 12 Issue 2 (THIS NEWSLETTER WILL BE DISTRIBUTED ELECTRONICALLY ONLY THIS QUARTER)

Commission Open for Business

Staff Working Remotely During Stay-at-Home Order

The health and well-being of our staff and county partners remains the highest priority for the Indiana Public Defender Commission. Effective immediately, staff members (not on leave) shall work remotely, and the Commission Office will be closed to the public until the Governor lifts the order. However, all Commission business functions will continue.

CALLS ANSWERED: Calls to the Commission's main line (317-233-6908) will be answered during normal business hours. A previous email indicated that calls would be answered only via voicemail. After-hour voicemails shall be forwarded to staff for a prompt reply.

EMAILS REPLIED TO PROMPTLY: As usual, county partners and members of the public are encouraged to reach out directly to staff via the email addresses listed on the Commission's website (<https://www.in.gov/publicdefender/>) or at: information@pdcom.in.gov Regular mail will also be accepted as usual. Email is preferred.

REIMBURSEMENT DUE DATE UNCHANGED: The next county reimbursement request deadline is May 15. If closures at the county level impact the ability to meet this deadline, please reach out to Commission staff to seek assistance or guidance. *Please remember that all counties are required to use the new reporting forms.*

FOLLOW TWITTER FOR UPDATES: The Commission's Twitter Account serves as an ongoing update about Commission business. Please follow us at <https://twitter.com/IndianaPDCom>.

Commission Clarifies Reimbursement Policy for Appeals of Misdemeanor Cases

Over the past two meetings, the Commission has been discussing the issue of reimbursement of appeals involving misdemeanor cases.

This discussion resulted from a request from Marion County to be permitted to seek reimbursement for appellate cases that result from misdemeanors.

The Commission tabled the issue at the December meeting to seek further guidance from the fiscal leaders in the General Assembly, due to the Commission's statutory prohibition of misdemeanor reimbursement.

After considering the input and a robust discussion, the Commission clarified that, effective January 1, 2021, these cases WILL NOT be reimbursable. See page 2 for further guidance about how counties should report their cases on the reimbursement forms to receive reimbursement until January 1, 2021.

The Commission delayed this action to allow counties time to adjust budgets.

We're hopeful that this statutory prohibition will change during the 2021 Legislative Session. Let us know if you are willing to reach out to your local legislators.

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New Law Seeks to Apply Indigence Findings Uniformly Throughout all Indiana Courtrooms

A new state statute is set to become effective on July 1 that seeks to apply indigence standards uniformly throughout Indiana. SEA 302 establishes a procedure for a criminal court to use in determining if a defendant is indigent. In addition to considering issues that are currently considered in most courts (such as assets, income, and expenses), the bill adds some specific new items that the court may consider.

Click this link to read the full bill:
<http://iga.in.gov/legislative/2020/bills/senate/302#document-48c5b34a>

The bill specifically allows the court to consider a defendant’s eligibility for need-based public assistance programs in making the determinations. The bill also allows a court to prorate fines, fees, and court costs. It also requires the court to inquire at sentencing whether or not the defendant has paid any assessed public defense fee(s) that may have been assessed.

It is unclear whether or not this new law will impact county budgets or the Public Defense Fund. Currently, indigence determinations are solely at the discretion of the trial court per established case law. The Commission will monitor this new law once it becomes effective. If there is a noticeable change in your county’s request for reimbursement (positive or negative) that you believe may be attributable to this change in statute, please discuss with Commission Staff.

ENGROSSED
SENATE BILL No. 302

DIGEST OF SB 302 (Updated February 12, 2020 12:44 pm - DI 135)

Citations Affected: IC 35-33.

Synopsis: Indigency determinations. Establishes a procedure for a criminal court to use in determining if a defendant is indigent. Provides that, if a court has ordered a defendant to pay part of the cost of representation, the court shall inquire at sentencing whether the defendant has paid the required amount. Specifies that a court may prorate fines, fees, and court costs based on the person's reasonable ability to pay. (The introduced version of this bill was prepared by the interim study committee on corrections and criminal code.)

Effective: July 1, 2020.

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(HOUSE SPONSORS — STEUERWALD, DELANEY, BECK)

Appeals of Misdemeanors Not Reimbursable Effective January 2021

AM	AN	AO	AP
0	0.000	0	0.000
TRIAL APPEALS		GUILTY PLEA APPEALS	
12.5		25.0	
#	CAP	#	CAP
0	0.000	0	0.000
0	0.000	0	0.000
0	0.000	0	0.000
0	0.000	0	0.000
0	0.000	0	0.000

As mentioned on Page 1, the Commission has clarified that, effective January 1, 2021, appeals of misdemeanor cases WILL NOT be reimbursable.

Until January 1, 2021: Do not use the CM appeals columns in the new forms and instead report appeals exactly as you currently report cases, as trial appeals and guilty plea appeals (now columns AM and AO).

This will calculate all appeals as reimbursable.

However, please report the total number of appeals of misdemeanors (CM) in the “Other Information” box found under the Additional Information Tab. Please enter the number of appeals of misdemeanors (trial and guilty plea) by attorney for the

quarter.

This will allow the Commission to review and calculate the financial impact the county would have faced each quarter. We will inform counties of how much less of a reimbursement to expect in 2021 to assist in budgeting.

After January 1, 2021: Please separate out CM appeals into the appropriate columns already in the new form.

A separate email will be sent to all county contacts, Chief/Managing Public Defenders, and Public Defense Boards explaining this policy.

If you have any questions about this procedure, please don’t hesitate to contact us.

We’re here to help.

March 2020 Commission Meeting Re-Cap

The Commission met on March 18, 2020, for its regular quarterly meeting. Most members of the Commission participated by phone. Members and staff present exercised social distancing. Among others, the following items were discussed.

Fiscal Updates

Staff reported that the current status of the Public Defense Fund is currently sufficient to cover reimbursement expenses without proration. A minor adjustment was approved to the internal office budget to allow for an increase in technology and rent expenses. The Commission's "overhead" remains at only 2.7% of the overall budget, one of the lowest in state government.

Requests for Reimbursements

All requests for reimbursement were approved for both capital and non-capital cases. The Commission reimbursed Marion County \$4,951 for capital reimbursement and approved approximately \$7.2 million for non-capital reimbursement. Overall compliance with standards fell to 85% from 87% during the quarter. Staff will be addressing several issues, but no 90-day letters of non-compliance were recommended or issued by the Commission this quarter.

Local Public Defender Board Appointments

Commission staff presented proposed consensus candidates for the following 8 counties. The Commission appointed each of the candidates to three-year

terms to their respective County Public Defender Boards.

Gibson	Stacey Humbaugh
Greene	Stella Royal
Jennings	Randall Shepherd
Monroe	Betsy Greene
Scott	Greg Gibson
Shelby	Jerry Lux
Vermillion	Jon Beardsley
Wabash	Jerry Ault

Misdemeanor Supervisor Reimbursement

In response to a request from Marion County that arose due to the new reporting forms, the Commission continued the debate of whether time spent supervising misdemeanor divisions should be reimbursable expenses. Most counties do not claim reimbursement for this expense.

After an extensive discussion, the Commission clarified that expenses associated with supervising misdemeanor cases and appeals is NOT reimbursable. Staff will be following up with this issue with any county that may have issues related to this policy.

See Online Minutes for More Information

As always, full minutes of each meeting may be found on the Commission's website at: <https://www.in.gov/publicdefender>. Draft, unofficial minutes of the prior meetings are also posted.



2020 Reimbursement Request Due Dates

First Quarter (Jan 1 - March 31)
Due: May 15 (NEW FORM MUST BE USED)

Second Quarter (April 1 - June 30)
Due: August 14

Third Quarter (July 1 - September 30)
Due: November 14

Commission Meeting Dates

June 17, 2020

September 23, 2020

December 16, 2020

All meetings are scheduled to begin at 2 pm. A brief executive session may precede each meeting. Meetings are scheduled to be held at our offices

(309 W. Washington Street, Suite 501, Indianapolis, IN 46204). Updates to meeting dates, times and locations are posted on our website: www.in.gov/publicdefender



Desk Audits Continue

The Commission continues to enhance the accuracy of overall reporting and to clarify expense categorization. To achieve this, we are again performing desk audits of each county this year.

Counties will be selected on a quarterly basis and notified near the end of the quarter. To comply with the audit, counties will be asked to provide transaction detail reports and payroll

information.

This information must be submitted electronically to: information@pdc.com. Additional documents may be requested as needed.

If your county is unable to submit the request for reimbursement or the audit materials by the due date as a result of the current COVID-19 restrictions, please let us know as soon as possible.

Commission Joins JRAC

The Chair of the Commission (or the Chair's designee) has been made a member of Indiana's Justice Reinvestment Advisory Council (JRAC) by legislation recently enacted.

Under the new legislation, JRAC is being merged with the Evidence Based Decision Making Steering Committee.

The goal of JRAC is to "review policies, promote state and local collaboration, and provide assistance for use of evidence based practices and best practices in community based alternatives and recidivism reduction programs."

Participation on this important state criminal jus-

tice policymaking group will allow the Commission to have a greater voice in shaping big-picture policymaking, and it will allow us to expand opportunities to advocate for the important role of public defense funding in state criminal justice policy planning and implementation.

In addition to managing funding, JRAC makes recommendation both locally and at the state level on a wide variety of criminal justice issues, including jail overcrowding.

To read the legislation creating the reconstituted council, visit: <http://iga.in.gov/legislative/2020/bills/house/1047>

New Online Tool Launched

The Commission has recently launched a tool to assist counties in verifying the qualifications the Commission has on file. Counties may access the database any time at the following link: www.in.gov/publicdefender/2378.htm. Instructions on using the database and a list of frequently asked questions are also available at the same link.

The Commission would urge every county to review their attorney qualifications regularly since the county is not reimbursed for cases an attorney is assigned but not qualified to receive. Using the database and tool above allows the counties to readily review the approved attorney qualifications.

Whenever a county believes the qualifications listed for an attorney are incorrect, please have the attorney

complete an updated Standards E and F form (available on the Forms page at: <https://www.in.gov/publicdefender/2376.htm>) and submit it to information@pdc.com. Please note that the October 2018 version of the form is the only one an attorney should use. Older forms do not list all the categories or training opportunities

The Commission audits the forms for accuracy. The Commission makes every attempt to contact the attorney to resolve any issues.

Please allow up to two weeks for the Commission to review incoming forms and update the online database.

We hope this new tool is helpful! Do not hesitate to contact the Commission with questions or concerns.



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Stay up to date between our quarterly newsletters by following us on Twitter. We post about updates to our website, helpful news items, and sometimes we make funny little jokes too!

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