

DRAFT FOR CONSIDERATION

INDIANA PUBLIC DEFENDER COMMISSION

December 16, 2020

2:00 PM

**309 W. Washington, 5th Floor, Commission Conference Room
Indianapolis, Indiana 46204**

Members in attendance:

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

Members absent:

None

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)

Audience members (all remotely):

Jim Abbs, Noble County Chief Public
Defender and President, Chief PD
Association
Bruce Andis, Lawrence County Chief
Public Defender
Ray Casanova, Marion County Public
Defender Agency
Victoria Casanova, appellate attorney
Mark Clark, Washington County Chief
Public Defender
Gretchen Etling, Vigo County Chief
Public Defender
Magistrate Julie Fessel Flanigan, Floyd
County
Janice Glotzbach, Floyd County Public
Defender Office Administrator
Jeremy Gooch, Hendricks County
Chief Public Defender
Judge Maria Granger, Floyd County
Amy Karozos, State Public Defender
Larry Landis
Lisa Moody, Gibson County Chief
Public Defender
Lewis Ostermeyer, House of
Representatives

At two o'clock, Chair Mark Rutherford called the meeting to order. Senior Staff Attorney Derrick Mason called the roll of the Board and determined that a quorum was present. Mr. Mason also introduced Commission staff. Audience members introduced themselves.

1. Approval of Minutes of the September 23, 2020 Meeting

The Chair inquired whether there were any corrections or changes to the Minutes from the September 23, 2020 meeting. There were none. The minutes were approved.

2. Approval of Harrison County Comprehensive Plan

Harrison County has been working to join the Commission for about five years and have finally been successful. Its budget was approved so it would likely submit a partial request for reimbursement to the Commission in March. The County will have a chief public defender and a deputy. Commission staff recommended approval. There were no questions or concerns. Ms. Corley moved to approve the Harrison County Comprehensive Plan. Judge Hanlon seconded the motion. There was not discussion and there were no objections. The plan was approved.

3. Legislative & Policy Update

Mr. Cullen recalled that at the September 2020 meeting, the Commission approved staff's legislative agenda to prioritize the full Public Defense Fund Appropriation (an increase of \$2.9 million/year) as the top priority for the 2021 Legislative Session and to explain why a decrease or no increase would significantly impact the counties. Mr. Cullen advised the Commission that Commission Staff has met and followed up with staff from the State Budget Committee in an effort to be included in the Governor's proposed version of HB 1001 (the State Budget Bill). No commitments have been received.

Mr. Cullen further informed the Commission that Senator Jon Ford (R-Terre Haute) plans to file a bill to permit the Commission to reimburse for misdemeanor funding during the 2021 session. Sen. Ford has some hope, based on tentative commitments from key legislators, that it will make at least moderate progress in the General Assembly. The fiscal impact is expected to be \$6.5 million per year during the next biennium. Gretchen Etling added that because the State has received more revenue than expected, Sen. Ford is very optimistic. Mr. Cullen echoed that hope

based on the state revenue report just released, which projects a three-percent shortfall in FY2021 and a three-percent increase in FY2022. He also noted that the only recommendation of the Interim Committee on Courts and Criminal Code was an increase in the public defender fund, understanding its impact on the criminal justice system.

4. Local Public Defender Board Appointments

Mr. Cullen apprised the Board that there were seven consensus candidates for local public defender board appointments in the following counties:

County:	Candidate:
Floyd	Matthew Schad
Hendricks	Ryan Tanselle
Harrison (new board)	Maryland Austin (interim appointment confirmed)
LaPorte	Dale Brown
Ripley	Ginger Bradford
Rush	Kevin Snyder
Washington	Marsha Dailey

Mr. Cullen observed that Mr. Schad had received wide support, including two people who attended the meeting (remotely). Ms. Corley moved to consider all seven candidates at once. There was no objection. The Commission agreed to consider them together.

Judge Meyer moved to approve the seven candidates. Judge Diekhoff seconded the motion. There were no questions, concerns, or objections. The candidates were approved.

5. Financial Status of Public Defense Fund

Mr. Mason provided the status of the Fund, which is sufficient to pay the 3Q2020 reimbursement requests.

In response to a question, Mr. Mason stated that he does not expect the Supreme Court's recently announced jury trial moratorium to have a significant impact on the Commission's expenditures because a) most public defenders are contract or salaried, and thus will be paid the same, and b) although some public

defenders are paid hourly, they are a relatively small percentage and most defendants do not go to jury trial at all, so the impact will likely be very minimal.

6. Status of County Compliance:

A. 90-Day Follow-Up: Lawrence County

At the September 23, 2020 meeting, the Commission approved a ninety-day letter to Lawrence County due to three areas, including caseloads, the county PD Board's compliance with its obligations, and pay parity issues. Mr. Mason provided an update to the Commission on those issues. Lawrence County provided a letter stating its progress and requesting ninety additional days to reach compliance. The county is now caseload compliant due to an especially high volume of cases being sent out of the office to hourly attorneys. The county has filled one of its vacant attorney positions and the Chief PD reports optimism regarding two more hires by the end of the year. Where previously the PD Board was not meeting quarterly and possibly not fulfilling their statutory obligations, the PD Board has since met and indicated it is willing to fulfill its obligations and work toward solving the county's PD issues. Finally, there was a concern that the prosecutor's office receives salary supplements that the PD's office does not, thus resulting in pay disparity and likely contributing to the issues the PD's office has with obtaining and retaining its deputy attorneys.

Mr. Mason stated that given the progress the county has made, particularly regarding caseload compliance, and the challenge of figuring out how to match the prosecutor's pay, Commission staff recommend giving additional time. Mr. Andis reiterated Mr. Mason's position. He also stated that the county council president said that the pay parity issue is one that cannot be readily addressed and will require additional time to resolve. While the caseload issue has been ongoing, the pay parity issue is relatively recent.

Judge Hanlon moved to give the Lawrence County PD Board ninety additional days to come up with a plan. Mr. Hensel seconded the motion. Senator Taylor asked if this approach was consistent with the Commission's approach to other counties. Mr. Mason answered that the pay parity issue was discovered in July or August, and staff sent the 90-day letter in September. Judge Meyer noted that the Commission has worked with county councils once these issues come up, and that it is not uncommon for county councils to miss these types of budget issues. Sen. Koch observed that progress is being made and the parties are working together to resolve them in good faith. Sen. Taylor said he would support the motion but affirmed the pay parity issue

needs to be complied with. Judge Hanlon commented that this would be a good reason for the legislature to discuss and approve wage equity for prosecutors and public defenders.

The Chair asked if there were any objections to Judge Hanlon's motion, and there were none. The motion carried unanimously. (1:23:04)

B. Follow-Up: Brown & Elkhart Counties

Brown County

Mr. Mason discussed the situation in Brown County involving a criminal investigation of a public defender and the appointment of a special prosecutor. Mr. Mason informed the Commission that Commission staff has received no additional updates regarding whether the public defender will face charges related to his hourly billing practices. There is no further evidence available as to who made the complaint to the sheriff's office other than the possible inferences made in the letters provided at the last quarterly meeting. He noted the very stifling impact that this could have on public defenders in Indiana.

Commission staff recommended no action at this time. Ms. Corley recommended that if there is a billing question in the future, the county board should be the first to review the situation. Mr. Mason responded that the Brown County Public Defender Board does plan to address the situation further but are waiting to see how the investigation and potential prosecution develop. The Commission took no formal action.

Elkhart County

Mr. Mason reminded the Commission that Elkhart County's first Chief Public Defender passed away and their new Chief Public Defender, Jeff Majerek, started in the 3Q2020. When Elkhart County joined the Commission, their first chief promised compliance by hiring additional staff and salary parity in the future. The approval of the county's comprehensive plan stated it was contingent upon payment of the Chief PD's salary no later than July 1, 2020.

Commission staff discovered that the initial Chief PD had not discussed all the staffing needs and salaries with everyone on the county council. Additional hiring has occurred and has been funded as needed thus far (although their attorneys are expected to be operating at or near the high end of their caseload capacity). The county has not yet agreed to any raise for the Chief PD. The prosecutor is arguing that if the public defender needs more attorneys, the prosecutor needs even more.

In a similar situation, Vanderburgh County was the last holdout to come into compliance with the Chief PD salary. Vanderburgh County was given time to come into compliance but received no reimbursement for the Chief PD’s reimbursement of salary and benefits. Elkhart County has already seen benefit from being a Commission member with social workers, support staff, and additional attorneys. Following the Vanderburgh example, Commission staff recommend no reimbursement for Jeff Majerek and give until the end of the fiscal year, through June 30, 2021, to come into compliance.

Ms. Corley moved to adopt Mr. Mason’s recommendation. Judge Hanlon seconded the motion. There was no discussion and there were no objections. The motion carried unanimously.

C. Non-Capital Caseloads

Mr. Mason reported that the counties are 89% compliant with caseload standards except for certain attorneys who have agreements with multiple counties. There were no questions or concerns from the Commission for Mr. Mason.

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

Mr. Mason recommended reimbursement as provided in the table below.

INDIANA PUBLIC DEFENDER COMMISSION
 Third Quarter 2020 Requests for Reimbursements in Non-Capital Cases
12/16/2020

County	Total Expenditure	Non-reimbursable Adjustment	% Adjustment	Eligible Expenditure	40% Reimbursed
Adams	\$98,134.19	\$16,000.52	16.30%	\$82,133.67	\$32,853.47
Allen	\$1,244,243.18	\$89,944.16	7.23%	\$1,154,299.02	\$461,719.61
Benton	\$0.00	\$0.00	0.00%	\$0.00	\$0.00
Blackford*	\$50,232.00	\$6,795.75	13.53%	\$43,436.25	\$15,448.25
Brown	\$94,345.75	\$25,785.48	27.33%	\$68,560.27	\$27,424.11
Carroll	\$46,929.05	\$16,606.13	35.39%	\$30,322.92	\$12,129.17
Cass	\$175,015.81	\$24,242.19	13.85%	\$150,773.62	\$60,309.45
Clark	\$372,604.07	\$10,888.37	2.92%	\$361,715.70	\$144,686.28
Clinton	\$82,611.24	\$18,879.38	22.85%	\$63,731.86	\$25,492.74
Decatur	\$95,698.03	\$27,935.38	29.19%	\$67,762.65	\$27,105.06

Dekalb	\$209,595.47	\$21,033.04	10.04%	\$188,562.43	\$75,424.97
Delaware	\$369,170.22	\$9,148.40	2.48%	\$360,021.82	\$144,008.73
Elkhart	\$744,161.89	\$128,813.92	17.31%	\$615,347.97	\$246,139.19
Fayette	\$114,273.85	\$13,111.43	11.47%	\$101,162.42	\$40,464.97
Floyd	\$213,141.93	\$10,356.14	4.86%	\$202,785.79	\$81,114.32
Fountain	\$32,519.47	\$7,441.26	22.88%	\$25,078.21	\$10,031.28
Fulton	\$74,310.08	\$19,441.08	26.16%	\$54,869.00	\$21,947.60
Gibson	\$231,244.46	\$23,356.39	10.10%	\$207,888.07	\$83,155.23
Grant	\$252,662.21	\$9,251.48	3.66%	\$243,410.73	\$97,364.29
Greene	\$157,254.83	\$20,217.76	12.86%	\$137,037.07	\$54,814.83
Hancock	\$98,958.26	\$16,298.97	16.47%	\$82,659.29	\$33,063.72
Hendricks	\$449,273.72	\$71,544.59	15.92%	\$377,729.13	\$151,091.65
Howard	\$487,082.84	\$41,527.42	8.53%	\$445,555.42	\$178,222.17
Jackson**	\$206,178.33	\$10,441.28	5.06%	\$195,737.05	\$75,194.83
Jasper	\$112,212.02	\$29,532.23	26.32%	\$82,679.79	\$33,071.92
Jay	\$122,772.42	\$16,936.54	13.80%	\$105,835.88	\$42,334.35
Jefferson	\$190,311.98	\$36,899.26	19.39%	\$153,412.72	\$61,365.09
Jennings	\$121,950.29	\$19,169.33	15.72%	\$102,780.96	\$41,112.39
Knox	\$219,933.24	\$38,382.34	17.45%	\$181,550.90	\$72,620.36
Kosciusko	\$287,288.78	\$85,093.46	29.62%	\$202,195.32	\$80,878.13
LaGrange	\$71,656.70	\$7,824.23	10.92%	\$63,832.47	\$25,532.99
Lake	\$1,349,364.45	\$11,047.23	0.82%	\$1,338,317.22	\$535,326.89
LaPorte	\$257,092.66	\$24,828.42	9.66%	\$232,264.24	\$92,905.70
Lawrence	\$223,868.20	\$22,634.68	10.11%	\$201,233.52	\$80,493.41
Madison	\$470,312.54	\$9,568.07	2.03%	\$460,744.47	\$184,297.79
Marion	\$5,410,123.00	\$111,427.37	2.06%	\$5,298,695.63	\$2,119,478.25
Martin	\$59,291.90	\$10,716.19	18.07%	\$48,575.71	\$19,430.28
Miami	\$198,170.29	\$18,846.10	9.51%	\$179,324.19	\$71,729.68
Monroe	\$621,986.10	\$134,329.70	21.60%	\$487,656.40	\$195,062.56
Noble	\$266,642.71	\$37,459.97	14.05%	\$229,182.74	\$91,673.09
Ohio	\$20,891.16	\$3,390.61	16.23%	\$17,500.55	\$7,000.22
Orange	\$121,559.82	\$18,635.13	15.33%	\$102,924.69	\$41,169.88
Owen	\$85,832.46	\$17,664.44	20.58%	\$68,168.02	\$27,267.21
Parke	\$45,085.86	\$18,827.28	41.76%	\$26,258.58	\$10,503.43
Perry	\$70,803.23	\$9,949.77	14.05%	\$60,853.46	\$24,341.39
Pike	\$37,101.89	\$1,077.06	2.90%	\$36,024.83	\$14,409.93
Pulaski	\$94,208.64	\$19,716.95	20.93%	\$74,491.69	\$29,796.68
Ripley	\$46,895.58	\$4,813.44	10.26%	\$42,082.14	\$16,832.86
Rush	\$102,858.90	\$17,606.54	17.12%	\$85,252.36	\$34,100.94
Scott	\$141,324.96	\$14,149.15	10.01%	\$127,175.81	\$50,870.32
Shelby	\$160,930.82	\$25,121.77	15.61%	\$135,809.05	\$54,323.62
Spencer	\$89,592.81	\$8,800.62	9.82%	\$80,792.19	\$32,316.88

Steuben	\$121,703.71	\$38,938.04	31.99%	\$82,765.67	\$33,106.27
St. Joseph	\$566,575.34	\$66,951.16	11.82%	\$499,624.18	\$199,849.67
Sullivan	\$94,137.55	\$24,186.52	25.69%	\$69,951.03	\$27,980.41
Switzerland	\$70,891.81	\$14,125.02	19.92%	\$56,766.79	\$22,706.72
Tippecanoe	\$1,013,787.53	\$151,730.39	14.97%	\$862,057.14	\$344,822.86
Union	\$14,206.50	\$2,040.75	14.36%	\$12,165.75	\$4,866.30
Vanderburgh	\$811,332.54	\$54,453.03	6.71%	\$756,879.51	\$302,751.80
Vermillion	\$61,069.77	\$14,706.07	24.08%	\$46,363.70	\$18,545.48
Vigo	\$718,767.39	\$127,776.00	17.78%	\$590,991.39	\$236,396.55
Wabash	\$94,816.17	\$16,319.38	17.21%	\$78,496.79	\$31,398.72
Warren	\$4,220.85	\$119.10	2.82%	\$4,101.75	\$1,640.70
Washington	\$168,270.52	\$22,987.79	13.66%	\$145,282.73	\$58,113.09
Total	\$20,639,483.97	\$1,947,841.65		\$18,691,642.32	\$7,471,630.73

*Blackford has \$1926.25 withheld due to 2Q desk audit findings

** Jackson has \$3,099.99 withheld due to 2Q desk audit findings

Mr. Mason noted that removing reimbursement for the Elkhart Chief would entail reimbursement of \$7,471,630.73

Judge Meyer moved to approve the reimbursement requests as recommended by Commission staff. Mr. Hensel seconded the motion. There were no objections. The motion carried unanimously, and the reimbursements were authorized.

8. Next Year's Quarterly Meeting Dates

Mr. Mason reminded the Commission that each December the Commission sets the following year's quarterly meeting dates, which are then posted on the Commission homepage. Commission staff proposed the following dates for 2021:

- 4Q20: March 19, 2021 (Friday)
- 1Q21: June 16, 2021
- 2Q21: September 22, 2021
- 3Q21: December 15, 2021

Rep. Lauer moved to approve these dates. Sen. Taylor seconded the motion. There were no objections. The motion carried unanimously.

9. Commission Staff Update

Mr. Mason provided the Commission with the following staff updates.

- Workload Study – Commission staff continues to work on possible changes to caseload standards. One of the first changes expected to be recommended is the elimination of the “Level 6 Felony Only” designation. Only a handful of counties use this system. Commission staff will reach out to impacted counties for comment on such a change.
- Federal funds for parental representation passed through DCS – After almost two years of effort, Commission staff expect the first reimbursement to occur this quarter from DCS to the public defense fund for public defense expenses the Commission reimburses relating to CHINS and TPR cases. Commission staff will update the Commission on the amounts received.
- New County Submissions – Warrick and Harrison County both expect to submit partial quarter reimbursement items for the fourth quarter of 2020 (at the March meeting) with both counties submitting full reimbursement requests at the June meeting. This will bring county participation to a record 66 counties.
- Annual Report – As always, the Commission’s annual report is being finalized. Commission members were requested to provide any corrections, alterations, or requests related to the report to staff as soon as possible. Sen. Koch commended all those involved with the preparation of the report, recognizing that it was very relevant and that the level of detail and professionalism was outstanding. Mr. Cullen noted that it was a team effort, but that Jennifer Pinkston did excellent work on the graphics and design.
- Greene County New Office – Greene County is the third county to develop a new public defense office since the Commission passed its guideline on reimbursing significant building-related expenses over a ten-year/40 quarter period. Their offices have been inspected pursuant to the guideline and reimbursement will begin at next quarter’s meeting.
- Lake County New Office – Lake County moved into their new office in 2019 but has had various county-based challenges in completing their finalized project budget. Lake County hopes to begin reimbursement for their build-out next quarter.
- The Commission’s quarterly newsletter – The newsletter is now fully electronic and has been redesigned. Commission members and the audience were exhorted

to notify staff if they are not receiving the newsletter. The next newsletter should come out in January.

- Finally, Commission staff just learned about a county that has a managing public defender that should be paid as a Chief Public Defender. Commission staff is reviewing the comprehensive plans for counties that do not have chief public defenders but have managing public defenders or offices. Staff expect to have a report for the Commission at the March meeting.

10. Other Matters

Mr. Hensel moved to adjourn the meeting. Sen. Koch seconded the motion. There were no objections. The meeting was adjourned at 3:20 p.m.