

DRAFT

INDIANA PUBLIC DEFENDER COMMISSION

December 14, 2022

2:00 PM

**309 W. Washington, 5th 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)
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)
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)
Mark Clark, Washington County Chief
Public Defender (remote)
Gretchen Etling, Vigo County Chief
Public Defender (remote)
Bob Hill, Marion County Chief Public
Defender (in person)
Amy Karozos, State Public Defender
(remote)
Sabra Northam, Hallowell Consultants
(remote)
Michael Slagle, WCIPDO 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.

1. Approval of Minutes of the October 5, 2022 Meeting

There were no changes to the minutes. Judge Hanlon 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: Warren County

Mr. Mason noted that at the Commission's October meeting, Commission members had concerns about the language in section 3(d) (related to the timing of the appointment of a public defender) of the Warren County Amended Comprehensive Plan. When Mr. Mason raised the language in question with the county judge, the judge eliminated the questionable language. Mr. Mason reminded the Commission that the main reason for the amendment was to add language allowing a defender to be hired with benefits. There were no other issues with the amended plan. Mr. Mason recommended approval.

Judge Meyer moved to approve the Warren County Amended Comprehensive Plan. Mr. Hensel seconded the motion. The motion carried unanimously.

3. Financial Status of Public Defense Fund

Mr. Mason reminded the Commission about the new format for presenting the financial status of the public defense fund, which now shows streams of income and expenses.

Mr. Mason recalled that the Commission previously granted an amendment to Vigo County's system navigator pilot after they asked for another system navigator. The Supreme Court is now pulling the funding for Vigo County public defenders in their Family Recovery Court (a program modeled after drug court for certain eligible CHINS cases). The cases in the Family Recovery Court include cases in the system navigator pilot.

The Commission wants to maintain the pilot as consistently as possible. The county is now requesting \$29,377.49 to pay for the public defenders working in the Family Recovery Court program. This is a small cost to maintain the system navigator

pilot in stasis, Mr. Mason reasoned. Commission staff will be asking the county to collect data on the Family Recovery Court.

Judge Meyer asked Mr. Mason to elaborate on the Supreme Court's removal of public defender funding. Mr. Mason explained that the Supreme Court has been starting a variety of pilot programs, including some for Rule 26 initial hearings, but also others such as the Family Recovery Court. As programs have grown, the Court has had to cut some funding. In particular, the Court seems to be prioritizing funding programs and not attorneys.

Judge Hanlon suggested that the Court was trying to start programs and then expected the counties to take over funding after they were started. Mr. Mason agreed, but he also noted that it was because requests for funding were exceeding capacity. He clarified that Commission staff were not requesting approval for additional funding; he just wanted to make sure the Commission had no objections to Commission staff approving such funding. There were no objections.

Mr. Mason provided the status of the Fund, which was sufficient to pay the reimbursement requests.

4. Statewide Salary Adjustments: Amendment to Internal Budget

Mr. Mason noted that cost of living salary increases and raises are often requested in June or sometimes in March. In 2022, however, the executive branch conducted a year-long study of all its positions and their salaries. As a result of the study, the executive branch recommended raises for executive branch employees, taking effect in October. The executive branch shared the results of its study with the judicial branch and other agencies and recommended that they mirror its approach.

The Supreme Court has followed the executive branch's example and instituted raises across the board, although not same as the executive branch. Mr. Mason stated that he has had several meetings with State Personnel, and he has followed their exact formula with raises for Commission staff. The average agency budget increase is about 16%; the Commission's is only a 6% increase. State Personnel evaluated Mr. Mason's proposal and thought it was reasonable and supported the proposed changes.

Commission staff combined salaries would increase from \$910,000 to \$965,000. Nevertheless, staff salaries would remain below 3% of the Commission’s total budget (see table below).

FY 2022-2023 Budget	Budget Amount	
AMENDED PAYROLL BUDGET	\$ 965,000.00	
Travel	\$ 18,000.00	
Interagency Charges (IOT, etc)	\$ 20,000.00	
Rentals	\$ 39,000.00	
Admin Ops/Supplies/Misc	\$ 15,000.00	
Contractual	\$ 50,000.00	
Subtotal	\$ 1,107,000.00	2.73%
% Increase to Payroll Budget	6.04%	

The Chair asked if there were any questions or concern. Sen. Taylor inquired whether the Commission had the funds to pay the salary increase. Mr. Mason affirmed that it did. Sen. Taylor moved to approve the proposed staff salary increase. Judge Hanlon seconded the motion. There were no further comments or questions. The Chair called the roll:

- Judge Diekhoff: yes
- Judge Hanlon: yes
- Mr. Hensel: yes
- Rep. Lauer: yes
- Judge Meyer: yes
- Ms. Corley: yes
- Sen. Taylor: yes

The Chair abstained. The motion carried unanimously. Mr. Mason, on behalf of the staff, thanked the Commission heartily.

5. Status of County Compliance

Mr. Mason noted that caseload compliance was shockingly good, and at 97%, it was the best Commission staff have seen since 2014 (excluding multicounty issues).

One attorney triggered multiple county compliance issues across six counties. Commission staff are talking with the attorney and the counties and will continue to work with all the parties to resolve the issue.

All the historical issues were resolved except Warrick. In Warrick, Mr. Mason previously wondered if they were playing a shell game, but it is clear they are not playing such a game, and it appears they should be fully compliant after the next quarter. He noted that someday he would like the Commission to fund a system that would help the counties coordinate the use of attorneys in multiple counties. Judge Hanlon recognized the need for attorneys and how hard it is for rural counties to find public defense attorneys.

Mr. Mason did not recommend any ninety-day letters.

a. \$30,175 for Part-Time PD's: Howard & Vanderburgh Counties

Mr. Mason recalled that, pursuant to Standard G, the minimum salary for counties without equivalent prosecutors is increasing in 2024 from \$60,350 to \$80,000. Commission staff have moved away from using the terms “full time” and “part time” and instead refer to the full-time equivalent (FTE) that a defender works. In making the determination whether a county has equivalent positions, Commission staff evaluate whether deputy prosecutors are doing similar work and have similar experience to public defenders.

While doing the Commission’s biannual pay parity analysis, Commission staff identified two counties that were using the \$60,350 amount solely because the county had no part-time prosecutors.

Howard County realized that they were not properly compensating their public defenders after the county hired at least one part-time prosecutor. The county sent a letter to the Commission proposing to resolve their issue by gradually increasing public defender salaries and reducing FTE over the next two years to achieve true parity. Mr. Mason recommending approving this plan so long as the county made any salary adjustments for the public defenders to match any raises that the prosecutor’s office provided between now and then.

Judge Hanlon asked if this is an office with benefits. Mr. Mason responded that it is an office and the defenders are all part-time, but they do receive benefits. Judge Hanlon asked what this decision would mean for counties with contracts. Mr. Mason responded that most counties do use part-time defenders with contracts that are based on the salaries of the counties' deputy prosecutors. Howard County just rationalized that since there were no part-time prosecutors, there were no comparable prosecutors, and the public defender office could pay its defenders based on the \$60,350 amount.

Similarly, Commission staff discovered that Vanderburgh County has been paying its part-time public defenders based on the \$60,350 salary because there were no part-time deputy prosecutors. Mr. Mason stated that Vanderburgh County sent Commission staff a letter recognizing that it needed to change its compensation for its part-time defenders and expressed a desire to do so before its budget submission next year. Mr. Mason proposed that the county be required to send the Commission a plan by March detailing how it will come into compliance in the budget it submits for 2024.

Ms. Corley moved to send a letter to Howard and Vanderburgh Counties stating that public defender contracts must be based on actual county prosecutor salaries, and the counties need to inform the Commission how they will do so by the March meeting. Judge Diekhoff seconded the motion. The Chair clarified that the letter would not be an enforcement action but a pre-ninety day letter. There were no objections, and the motion carried unanimously.

Mr. Mason added that Howard County has additional issues: for example, the chief public defender does not receive a supplemental payment that the elected prosecutor receives (contrary to Commission requirements), and the County gave the prosecutor a raise after denying the supplemental payment to the chief public defender.

b. Chief PD Compensation: Adams County, Shelby County & Contractors

i. Adams County

Adams County submitted its comprehensive plan in 2000. It provided for a “county public defender” (Chief Public Defender) and an office. It now has three salaried defenders and two support staff. In 2007, the county submitted an amended plan that changed “county public defender” to “managing public defender” to avoid paying the salary for a Chief Public Defender. The Commission had just lost Henry County because it did not want to pay its chief the same as the prosecutor. Larry Landis handled the negotiations and the Commission approved the amended plan. The Commission minutes reflect that the change was made to save the county money.

Mr. Mason has talked to Adams County repeatedly over the last two years about this situation. He understood they would fix it, but they have not. Mr. Mason proposed that the Commission send a letter (not a 90-day letter) to Adams County’s Chief and PD Board advising them that after reviewing their comprehensive plan, it is not in compliance with Commission Standards and Guidelines nor the applicable statute. The letter would require the county to explain how it would resolve the issue by the March meeting.

Judge Meyer asked what kind of pushback Mr. Mason expected from the county. He was also curious why Commission staff proposed addressing this issue now. Mr. Mason responded that like with Vanderburgh County, the Commission is doing pay parity audits more carefully and evaluating these issues more thoroughly. He also said that the Commission would be willing to work with the county to phase in the needed changes over time. Judge Meyer asked what the Commission response would be if the county did not budge. Mr. Mason responded that the county and the Commission must follow the statute, and because the county has an office, it needs to comply with the law.

Judge Hanlon asked how the Commission defines “office.” Mr. Mason responded that he had considered defining the term, but he concluded it would be more appropriate to keep the term more expansive because it is applied many ways: some “offices” have only a chief working out of them, whereas others may have only

support staff, and there are many variations. In Adams, the county says it has an office, and they have a physical office with staff working from it. Judge Hanlon observed that the Commission does not want to create an incentive for counties to eliminate their office, to which Mr. Mason agreed. There is no indication, however, that the county is considering closing their office. The county's feet needed to be held to the fire, he stated.

Judge Hanlon moved to have Mr. Mason send the letter requesting an explanation by March how it would amend its plan and resolve the situation. Judge Meyer seconded the motion. Judge Meyer suggested that the letter explain why this action was being taken now. There were no additional comments or objections. The motion carried unanimously.

ii. Shelby County

The Shelby County Comprehensive plan, in contrast, provides for a managing public defender and it does not mention an office. Nevertheless, the county public defender has an office, support staff, and a website discussing its office and the services its office provides. Cases are assigned to the public defender office. Thus, Mr. Mason proposes that the Commission send a letter (not a 90-day letter) to the Shelby County Managing Public Defender and the county Board advising them that upon review of their comprehensive plan, it appears to be out of date regarding the services their county currently has in place in relation to the operation of an office without a chief public defender. The county would be requested to advise the Commission by the March meeting as to how the Board would amend its plan and add a part-time chief.

Judge Hanlon asked if there were an agreed understanding of definition. Mr. Mason noted that the county itself says they have an office. He does not anticipate having to address this issue elsewhere. This is the only county that says it has an office but that uses a managing public defender. He hesitates to create a definition for an "office" that would allow a county to find an exclusion to the definition and thus try to eliminate their chief.

Ms. Corley moved to authorize Commission staff to send a letter to Shelby County asking them to amend their comprehensive plan or explain why the county does not need to do so. Mr. Hensel seconded the motion. The Chair inquired whether there was any discussion. Ms. Corley proposed that language be included in the letter that the Commission was not punishing the county for having an office; the Commission does want to encourage having an office. Mr. Mason responded that such language should be included in both letters.

Mr. Abbs was granted leave to speak. He stated that the issue is much bigger than was being discussed. He believes every county needs a chief, and he is concerned that counties will try to eliminate offices to use managing public defenders. Judge Hanlon suggested that if the Commission re-examines its standards, the Commission require chiefs, but set a minimum salary and not require parity. She was concerned because people say, “the Commission gets 100% of control and we get 40% of the money.” Mr. Cullen stated that obtaining legislation authorizing state-paid chiefs might be an option. Judge Hanlon responded that if pay parity is to be required, source (of payment) parity is also needed.

The Chair asked if there were any objections to the motion. There were none. The motion carried unanimously.

iii. Contract Chief PDs

Mr. Mason explained that until recently, no counties have hired chiefs as contractors. In the past few years, both Knox and Miami Counties have created contractor chief public defenders. Commission staff informed the counties this was permitted but that the salaries and compensation, including benefits, needed to be the same as that provided to the elected prosecutor (to prevent all counties from simply hiring their chiefs as contractors to avoid paying benefits). Miami County sought and was allowed to create a contract chief position that included benefits.

Knox County’s chief, however, does not want health insurance (he is covered by his wife’s benefits), so the county is neither providing it nor the equivalent budgeted amount. Mr. Mason recommended sending a letter to the county stating that

the value of the benefits must be given to prevent future chiefs from being encouraged to also report that they simply would not take the insurance, if offered, so there is no reason to compensate for it. He also wants to avoid incentivizing the county to hire someone that would decline benefits to save the county money.

Rep. Lauer asked if there would be any practical differences between a salaried public defender and a contracted public defender in terms of role or responsibility. Mr. Mason said there would not be any differences.

Judge Meyer observed that the clearest path forward, and the easiest thing for the Commission to enforce, would be to require chiefs to accept the benefits. Mr. Mason observed that it made sense to allow counties to have contract chiefs because it meant that two more counties established chief positions.

Judge Hanlon moved to adopt the staff recommendation requiring counties that have an office to have salaried chiefs with benefits. Ms. Corley seconded the motion. She further argued that we should move toward having a standard definition for a chief, including an office and salary paid the same as an elected prosecutor.

Rep. Lauer asked if a county may have a salaried chief at .6 FTE. Mr. Mason answered yes. Mr. Lauer asked that if a chief is full time, what insures that the chief is working full time and not doing other things. Mr. Mason responded that the restriction is what the county public defender board allows (since it is the board that hires the chief). Mr. Lauer asked whether that could be dictated by the contract with the public defender board, and Mr. Mason said it could. The challenge of outside work is something the Commission may need to address in the future. The Chair called the roll:

Judge Diekhoff: yes

Judge Hanlon: yes

Mr. Hensel: yes

Rep. Lauer: yes

Judge Meyer: yes

Ms. Corley: yes

Sen. Taylor: yes

The Chair abstained. The motion carried unanimously.

6. Requests for Reimbursement:

a. 50% Reimbursement in Death Penalty Cases

Mr. Mason advised the Commission that a few more death penalty cases will likely be coming, but for now only Clinton and Marion are seeking reimbursements. The Clinton County request is lower due to a billing issue; he told the county the Commission would accept any reasonable time delay in the request.

INDIANA PUBLIC DEFENDER COMMISSION

Reimbursement Requests in Capital Cases

December 14, 2022

COUNTY	DEFENDANT	TOTAL
Clinton	Ferrell	\$13,269.41
Marion	Dorsey	\$2,089.00
TOTAL		\$15,358.41

LATE CLAIMS

TOTAL		\$15,358.41

Judge Hanlon moved to approve the death penalty reimbursements. Judge Meyer seconded the motion. The motion carried unanimously.

b. 40% Reimbursement in Non-Capital Cases

Mr. Mason reported that there a few adjustments to the non-capital reimbursement requests due to audits of Rush and Vigo Counties. The total reimbursement request for the third quarter of 2022 is \$8,608,560.93 (see table below).

INDIANA PUBLIC DEFENDER COMMISSION

Third Quarter 2022 Requests for Reimbursements in Non-Capital Cases

12/14/2022

County	Total Expenditure	Non-reimbursable Adjustment	% Adjusted	Eligible Reimbursement	Adjustments	Total Payment
Adams	\$133,488.21	\$20,705.97	15.51%	\$45,112.90		\$45,112.90
Allen	\$1,423,792.81	\$103,062.24	7.24%	\$528,292.23		\$528,292.23
Benton	\$32,702.40	\$2,567.65	7.85%	\$12,053.90		\$12,053.90
Blackford	\$57,039.00	\$12,269.10	21.51%	\$17,907.96		\$17,907.96
Brown	\$59,058.13	\$18,697.10	31.66%	\$16,144.41		\$16,144.41
Carroll	\$81,006.88	\$8,750.18	10.80%	\$28,902.68		\$28,902.68
Cass	\$187,590.39	\$31,149.47	16.61%	\$62,576.37		\$62,576.37
Clark	\$454,018.80	\$31,507.28	6.94%	\$169,004.61		\$169,004.61
Clinton	\$83,023.25	\$20,035.61	24.13%	\$25,195.06		\$25,195.06
Crawford	\$65,775.88	\$7,109.15	10.81%	\$23,466.69		\$23,466.69
Decatur	\$119,144.38	\$18,912.91	15.87%	\$40,092.59		\$40,092.59
Dekalb	\$237,593.33	\$12,265.96	5.16%	\$90,130.95		\$90,130.95
Delaware	\$367,399.36	\$7,060.15	1.92%	\$144,135.68		\$144,135.68
Elkhart	\$947,345.31	\$135,790.08	14.33%	\$324,622.09		\$324,622.09
Fayette	\$100,436.15	\$12,577.66	12.52%	\$35,143.40		\$35,143.40
Floyd	\$275,010.53	\$20,869.40	7.59%	\$101,656.45		\$101,656.45
Fountain	\$33,301.00	\$6,454.29	19.38%	\$10,738.69		\$10,738.69
Fulton	\$91,714.14	\$28,131.71	30.67%	\$25,432.97		\$25,432.97
Gibson	\$207,813.99	\$32,814.29	15.79%	\$69,999.88		\$69,999.88
Grant	\$298,678.38	\$4,675.44	1.57%	\$117,601.18		\$117,601.18
Greene	\$194,578.06	\$29,489.53	15.16%	\$66,035.41		\$66,035.41
Hancock	\$298,135.66	\$16,498.92	5.53%	\$112,654.70		\$112,654.70
Harrison	\$171,805.64	\$20,023.21	11.65%	\$60,712.97		\$60,712.97
Hendricks	\$523,617.91	\$84,956.78	16.22%	\$175,464.45		\$175,464.45
Howard	\$527,001.18	\$42,160.49	8.00%	\$193,936.28		\$193,936.28
Jackson	\$258,614.61	\$13,805.44	5.34%	\$97,923.67		\$97,923.67
Jasper	\$112,270.71	\$26,825.60	23.89%	\$34,178.04		\$34,178.04
Jay	\$149,833.36	\$14,532.03	9.70%	\$54,120.53		\$54,120.53
Jefferson	\$206,533.31	\$31,142.75	15.08%	\$70,156.22		\$70,156.22
Jennings	\$121,338.83	\$17,277.61	14.24%	\$41,624.49		\$41,624.49
Knox	\$198,857.58	\$32,977.11	16.58%	\$66,352.19		\$66,352.19
Kosciusko	\$230,699.32	\$52,845.20	22.91%	\$71,141.65		\$71,141.65
LaGrange	\$89,860.86	\$16,296.96	18.14%	\$29,425.56		\$29,425.56
Lake	\$1,585,765.83	\$8,458.19	0.53%	\$630,923.06		\$630,923.06
LaPorte	\$275,490.91	\$45,463.48	16.50%	\$92,010.97		\$92,010.97

Lawrence	\$325,236.81	\$41,617.95	12.80%	\$113,447.54		\$113,447.54
Madison	\$573,813.71	\$31,113.92	5.42%	\$217,079.92		\$217,079.92
Marion	\$6,071,321.22	\$512,497.87	8.44%	\$2,223,529.34		\$2,223,529.34
Martin	\$76,797.11	\$6,439.00	8.38%	\$28,143.24		\$28,143.24
Miami	\$185,124.65	\$27,832.64	15.03%	\$62,916.80		\$62,916.80
Monroe	\$698,896.88	\$106,839.65	15.29%	\$236,822.89		\$236,822.89
Noble	\$432,379.31	\$43,286.00	10.01%	\$155,637.32		\$155,637.32
Ohio	\$34,161.97	\$2,504.43	7.33%	\$12,663.02		\$12,663.02
Orange	\$95,476.90	\$17,767.18	18.61%	\$31,083.89		\$31,083.89
Owen	\$93,763.18	\$16,079.04	17.15%	\$31,073.66		\$31,073.66
Parke	\$45,209.16	\$9,642.96	21.33%	\$14,226.48		\$14,226.48
Perry	\$65,397.92	\$18,917.83	28.93%	\$18,592.04		\$18,592.04
Pike	\$15,709.10	\$633.16	4.03%	\$6,030.38		\$6,030.38
Pulaski	\$89,148.24	\$16,605.22	18.63%	\$29,017.21		\$29,017.21
Ripley	\$58,890.80	\$13,108.36	22.26%	\$18,312.98		\$18,312.98
Rush	\$110,018.98	\$14,709.27	13.37%	\$38,123.89	-\$3,802.06	\$34,321.83
Scott	\$151,733.89	\$16,369.05	10.79%	\$54,145.94		\$54,145.94
Shelby	\$177,021.55	\$14,005.61	7.91%	\$65,206.38		\$65,206.38
Spencer	\$127,960.64	\$16,367.07	12.79%	\$44,637.43		\$44,637.43
Steuben	\$128,443.79	\$39,954.49	31.11%	\$35,395.72		\$35,395.72
StJoseph	\$707,193.07	\$77,607.49	10.97%	\$251,834.23		\$251,834.23
Sullivan	\$59,385.85	\$15,873.77	26.73%	\$17,404.83		\$17,404.83
Switzerland	\$111,623.51	\$13,419.54	12.02%	\$39,281.59		\$39,281.59
Tippecanoe	\$1,018,436.53	\$179,918.74	17.67%	\$335,407.11		\$335,407.11
Union	\$21,001.50	\$2,250.00	10.71%	\$7,500.60		\$7,500.60
Vanderburgh	\$932,332.27	\$64,086.04	6.87%	\$347,298.49		\$347,298.49
Vermillion	\$79,420.97	\$15,405.53	19.40%	\$25,606.18		\$25,606.18
Vigo	\$887,064.87	\$159,038.60	17.93%	\$291,210.51	-\$1,884.77	\$289,325.74
Wabash	\$134,902.63	\$25,390.40	18.82%	\$43,804.89		\$43,804.89
Warren	\$3,310.00	\$579.47	17.51%	\$1,092.21		\$1,092.21
Warrick	\$158,137.77	\$18,496.90	11.70%	\$55,856.35		\$55,856.35
Washington	\$187,112.79	\$32,877.53	17.57%	\$61,694.10		\$61,694.10
WCIPDO	\$38,249.29	\$0.00	0.00%	\$15,299.72		\$15,299.72
TOTAL	\$24,095,012.95	\$2,559,393.65		\$8,614,247.76	-\$5,686.83	\$8,608,560.93

Judge Hanlon moved to approve the reimbursements. Mr. Hensel seconded the motion. The motion carried unanimously.

7. Local Public Defender Board Appointments

Mr. Cullen reported that Commission staff were recommending that the Commission appoint and reappoint consensus candidates to local public defender boards (see table below).

<i>Action Requested: Re-appoint the following consensus candidates.</i>	
<i>County</i>	<i>Candidate</i>
DeKalb	Joe Dunn
Delaware	Ted Baker
Elkhart	Ian Forte
Hancock	Michael Adkins
Howard	R. Cartwright Ellis
Jackson	Joe Theole
Perry	James Tyler
Pulaski	Laura Bailey
Shelby	Brady Claxton
Steuben	Ronald Thomas
Vigo	Becky Buse
Warrick	Chad Groves
<i>Action Requested: Appoint the following new consensus candidates.</i>	
<i>County</i>	<i>Candidate</i>
Madison	Jack Brinkman
Miami	Ryan Schmidt
Noble	Michael Yoder
Pike	Cheryl Deffendoll
Sullivan	Joanne Davis

Judge Diekhoff moved to approve staff's recommended appointments. Mr. Hensel seconded the motion. Sen. Taylor stated that he wants to make sure that Commission staff are considering ethnic and gender diversity at local level. Mr. Cullen affirmed that Commission staff are striving to increase diversity in its appointment process and that he considers it with every appointment. The motion carried unanimously.

Mr. Cullen reported that in Hendricks County, where there were two candidates, the Commission staff did not make a recommendation. Mr. Christopher Arrington is a local attorney. Ms. Jennifer Stout worked for Judge Love for 20 years. Both contacted Mr. Cullen proactively. The county chief public defender does not have a preference. The judges preferred Mr. Arrington. Mr. Cullen reports that both individuals are kind people who are interested in volunteering. Whichever individual is not appointed would likely be referred to the judges as a recommendation for their selection to the board.

Ms. Corley stated that she appreciated that Ms. Stout has in-court experience, and she opined that Ms. Stout would be a champion for public defense. Judge Hanlon spoke in favor of Mr. Harrington since he was the judges' preference. Sen. Taylor said he would favor Ms. Stout since he had advocated for gender diversity. Ms. Corley moved to appoint Ms. Stout to the Hendricks County Public Defender Board. Sen. Taylor seconded the motion. The Chair called the roll:

Judge Diekhoff: yes

Judge Hanlon: no

Mr. Hensel: yes

Rep. Lauer: no

Judge Meyer: no

Ms. Corley: yes

Sen. Taylor: yes

The Chair abstained. The motion passed, 4-3, and Ms. Stout was appointed to the Hendricks County Public Defender Board.

Mr. Cullen recommended that a formal letter be sent to Mr. Arrington thanking him, on behalf of the Commission, for volunteering to serve, and the Chair strongly concurred.

8. Legislative & Policy Updates

Mr. Cullen reminded the Commission that it is staff's hope that the Commission's base budget increase will again be included in the Governor's proposed

State Budget. He stated that he should be receiving an update after the Budget Agency decides after the Revenue Forecast is finalized.

He also provided an update on the retirement plan for chief public defenders. The Commission is advocating for the change to help create a strong public defense system, with this retirement benefit an attractive recruiting tool. The Pension Management Oversight Committee has approved the concept but not the language. One of the details to be worked out is how far back to go and who will be included. The current proposal would permit all current Chiefs and Chief Deputies who are paid according to the Commission's standards to receive years of service credit in the new fund starting in 2014 (the first year pay parity was enforced). It would likely require that participants be full time with no private practice.

One issue has been that it will likely cost up to one million dollars to set up a new retirement program. Some have suggested that it would be more cost effective to merge with the prosecutors' retirement program. The chief public defenders would be fine with such a move, but do not believe the prosecutors would agree. If the Legislature were to propose such an approach, it would be better to let it come from them. Mr. Cullen noted that much more information would be available at the March meeting. Mr. Abbs was allowed to speak and thanked the Commission and Mr. Cullen for their help in advocating for this proposal. Mr. Hensel moved to authorize staff to continue working on the public defender retirement fund. Judge Hanlon seconded the motion. It carried unanimously.

Mr. Cullen recalled that at the October meeting, the Commission discussed a name change. He reported that after much discussion, Commission staff have settled on the name "Commission on Court Appointed Attorneys (CCAA)." The name has been polled on our website and in the newsletter and was generally well received. The change would not be a legislative priority but would be pushed if the perfect opportunity arose.

Judge Meyer wondered if the name was too broad since the Commission does not cover some court-appointed counsel. Ms. Corley stated that she likes a name related to what the Commission does, such as standards and reimbursement. Rep.

Lauer asked what it would cost, in terms of updating stationary, business cards, and the website, to make the change. Mr. Mason stated that it would be a de minimis amount. Judge Hanlon observed that it would reduce confusion between the Commission and the Council and other public defender agencies.

Judge Diekhoff moved to authorize staff to seek an opportunity to change the name in the statute if appropriate legislation became available. Judge Hanlon seconded the motion. The Chair called the roll:

Judge Diekhoff: yes

Judge Hanlon: yes

Mr. Hensel: yes

Rep. Lauer: abstain

Judge Meyer: no

Ms. Corley: no

Sen. Taylor: abstain

The Chair abstained. The motion passed, 3-2.

Finally, Mr. Cullen said that Sen. Jon Ford continues to move forward with proposed legislation providing a right to counsel for children in CHINS and TPR cases. The bill has gone through several iterations and now authorizes pilot programs. Mr. Cullen suggested to Sen. Ford that the Commission might be well-suited to run the pilot through the Commission's "At Risk Youth and Families" funding, but that the Commission would need General Assembly authorization to do so. Sen. Ford liked that approach.

9. New Standard Request: Marion County Support Staff Pay Parity Request

Mr. Mason informed the Commission that after the discussion at the last Commission meeting, Commission staff received a new proposal from the Marion County Public Defender Agency. Mr. Mason liked this option more than the previous proposals. He noted that staff pay parity is something important to consider, because it is difficult to provide equality in defense if prosecutors pay their staff and investigators so much more. He recommended that public comment should be

solicited because it is uncertain how many counties it would affect. Mr. Mason also reiterated that Commission staff would not be able to handle staff pay parity audits except perhaps ad hoc as needed. He recommended that parity with the courts not be required, since that is not a requirement in the Commission standards generally. Thus, the staff recommendation would be to adopt the Marion County first revised standard as an amendment to Standard G, with the last three words (“and court system”) deleted.

The Marion County first revised proposed standard provides:

The comprehensive plan shall provide that the salaries and compensation of full time salaried public defender support staff shall be the same as the salaries and compensation provided to the support staff in similar positions with similar experience in the prosecutor’s office and court system.

The county also offered an alternative:

In counties without a uniform pay scale or that exempt court and prosecution staff from compliance with a uniform pay scale, the comprehensive plan shall provide that the salaries and compensation of full time salaried public defender support staff shall be the same as the salaries and compensation provided to the support staff in similar positions with similar experience in the prosecutor’s office and court system.

Judge Hanlon expressed her opinion that regulating staff pay parity is a total overreach of the Commission’s authority and not something the Commission should address. She proposed instead sending a letter to Marion County, focusing on the turnover in staff, as an incentive to increase staff parity. Mr. Mason stated that Commission staff could send a letter asking the county to address the issue or else the Commission would have to address the issue, such as with a new standard.

Mr. Hill stated that the biggest problem is with retention, not recruitment. If staff pay parity is not realized, adequate staff, especially in terms of quality, will never be reached. Judge Hanlon agreed and asked if this could be addressed by telling the

county it is not adequately staffed. Having adequate staffing saves the county money because it means attorneys can carry heavier caseloads.

The Chair asked whether this problem was unique to Marion County because of its size. Mr. Mason responded that he has been asked about staffing pay parity a few times over the years and that he has responded that they would ordinarily be addressed by a pay schedule. He observed that Marion County's situation seems to be system-wide and more pervasive than anything he's seen.

Judge Hanlon said that the question becomes with whom pay parity should be established. If the question is about social workers, the comparison should probably be to DCS and not to the prosecutor's office.

Mr. Cullen suggested that the agency have a conversation with the city controller's office. Mr. Hill responded that he has had numerous conversations with the controller's office. Mr. Cullen asked why the controller won't adjust the pay. Mr. Hill answered that the prosecutor is treated differently. Mr. Cullen suggested that perhaps this issue should be raised with the mayor's office. Mr. Hill said that his office has spoken with individuals from the controller's office to the mayor's office. The issue is the independence of the prosecutor's office; the Public Defender Agency is under the city's HR, whereas the prosecutor is not. Mr. Hill added that pay parity should include an evaluation of DCS pay, as his CHINS staff make \$15,000 less.

The Chair asked whether the Commission could make such a change and limit it to a Class 1 City. Mr. Mason said that the Commission has broad authority to make rules. Mr. Hill recalled that previously Class 1 Cities did have separate standards for D felonies.

Mr. Hensel stated that he did not understand why the Sheriff and DCS should influence staffing salaries and suggested that prosecution salaries be the guideline. Mr. Hill said that he would be happy with parity with the prosecutor's office as a minimum first step but reiterated that DCS attorneys start at \$15,000 more than his attorneys.

Ms. Corley observed that going forward, discrepancies are going to be worse, as defenders will be across the table from attorneys earning even more because of the

executive branch pay increases. It is therefore appropriate, she believes, to look at more than just the prosecutor but also DCS, the sheriff, etc., in making parity evaluations. Mr. Hensel responded that he did not realize Mr. Hill's attorneys faced DCS attorneys in court, and thanked Ms. Corley for her comment.

Ms. Etling was granted leave to speak and noted that just the day before, she lost a CHINS/TPR attorney who went to DCS to obtain a salary paying \$19,000 more. Parity is needed with DCS, she argued. Perhaps parity with DCS attorneys, which is another state-funded agency, should be addressed in the future.

Judge Hanlon observed that the state likely needs a pay schedule for all its attorneys, and that this issue is symptomatic of huge problem. She is sympathetic to the staffing parity issue, but she does not believe the Commission should be involved with policing it at that level other than adequate staffing. Mr. Hensel responded that the Commission has crossed that line; it is involved with pay parity; the question is, how far should the Commission go. Mr. Hill stated that pay parity for attorneys has worked; once it was instituted, his office was able to retain quality, experienced attorneys.

Mr. Mason stated that considering some strong opposition on the Commission, he would modify the staff recommendation and suggest not putting the proposal out for public opinion, but instead electronically poll the counties who have support staff. He suggested that the Commission could also send letter to Marion County discussing adequate staffing and recommend a meeting with Mr. Cullen and the county.

Judge Hanlon stated that she did not want to kill the proposed changes if she were the only one with reservations. Judge Diekhoff said that she had stated her opposition to staff pay parity before, and she agreed with Judge Hanlon that if the Commission began regulating staff pay parity, it would be an overreach and would hurt the Commission's credibility. The Commission does need additional staffing data, she opined, and she does not want the proposed language to go out for public comment. Mr. Mason affirmed that there would be further discussion about DCS pay parity.

Ms. Corley asked what Marion County thought of Mr. Mason's proposal to study the issue, talk to counties with staff issues, and send a letter. Mr. Hill responded that this issue has caused a lot of heartburn due to losing staff, and that any assistance would be appreciated. A letter could help. A standard upon which they could rely would be more helpful.

Mr. Cullen asked if Mr. Hill thought a letter from the Chair, Mr. Mason, and the members of the Marion County Board would be effective. Such an approach would not require Commission approval. Mr. Hill said anything would be helpful.

The Chair inquired if anything that had been proposed would need Commission approval. Mr. Mason responded that Commission staff had enough direction to move forward as discussed. The Chair promised that the issue would be on the agenda again at the March meeting.

Mr. Hill expressed his opinion that the Commission would not have to enforce staffing pay parity, and that merely having the standard would be sufficient to compel action. Judge Hanlon responded that she believed the Commission does have enforcement obligations.

The Chair opined that the Marion County pay disparity probably violates the Commission's standards in some way.

The issue was tabled until the March meeting.

10. 2023 Commission Meeting Dates

Mr. Mason provided the Commission with proposed meeting dates for 2023. Two dates were proposed during the legislature: a Wednesday and a Friday. A consensus agreed that a Friday would be better. The following dates were agreed upon:

- Friday, March 24, 2023
- Wednesday, June 14, 2023
- Wednesday, September 20, 2023
- Wednesday, December 13, 2023

11. Other Matters

There were no other matters and no objections to adjournment. The meeting was adjourned at 4:31 p.m.