

DRAFT

INDIANA PUBLIC DEFENDER COMMISSION

September 22, 2021

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

Members absent:

Rep. Ragen Hatcher
Rep. Ryan Lauer

Staff in attendance:

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

Audience members (all remotely):

Jim Abbs, Noble County Chief Public
Defender and President, Chief
Public Defender Association
Bruce Andis, Lawrence County Chief
Public Defender
Ray Casanova, Marion County Public
Defender Agency
Gretchen Etling, Vigo County Chief
Public Defender
Jen Harmeyer, Acting Chief, Clark
County
Amy Karozos, State Public Defender
Dolan Monroe, Indiana House of
Representatives
Lisa Moody, Gibson County Chief
Public Defender
Michael Moore, Public Defender
Council
Mickey Weber, Clark County Chief
Public Defender (eff. October 1,
2021)

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

1. Approval of the July 21, 2021 Meeting Minutes

The Chair inquired whether there were any corrections or changes to the minutes from the July 2021 meeting. There were none. The Chair inquired if there were any objections to approving the minutes. There were no objections. The minutes were approved.

2. Approval of Comprehensive Plan: Crawford County

Mr. Mason stated that he has been speaking with Crawford County Judge Bell about the proposed comprehensive plan. The copy in the Commission materials was provided to Commission staff a few days before the meeting. It does not provide for a public defender board, due to the size of the county. It is primarily a contract system. Public defenders will largely be paid hourly. The county wants to start participation and reimbursements this quarter. Mr. Mason recommends that the comprehensive plan be approved, so long as it is revised to comply with the juvenile education requirements passed at the July meeting.

Ms. Corley expressed her concern that Section G did not include a reference to pay parity with the deputy prosecutor. Mr. Mason explained that this omission is because the county has no deputy prosecutors. Mr. Bray moved to approve the Crawford County Comprehensive Plan, provided it contains the juvenile education requirement language and a reference to pay parity guidelines. Mr. Hensel seconded the motion. There were no questions, concerns, or objections. The motion carried unanimously.

3. Approval of Electronic Meeting Policy

Mr. Mason presented a proposed Electronic Meeting Policy to the Commission. He observed that the Commission is still operating under a state of emergency, as declared by the Governor. As such, the electronic meeting policy would not currently apply. Once the emergency order is lifted, the proposed electronic meeting policy will

be required by statute. Mr. Mason noted that the second sentence (regarding members being able to be seen and heard) under “Voting” needs to be removed from the draft.

The proposed policy requires that one-third of the Commission members must be present in person. Roll call votes must be taken. Commission members must be present in person at a minimum of one meeting each year. Members must also provide notice of electronic attendance to Mr. Mason at least two days before the meeting. While the Commission can impose more requirements than mandated by statute, Commission staff suggest making the requirements no more stringent than necessary. Mr. Cullen further stated that the Public Access counselor approved the Electronic Policy.

Sen. Taylor moved to adopt the Electronic Policy. Judge Hanlon seconded the motion. There was no discussion and no objection. The motion carried unanimously.

4. Financial Status of Public Defense Fund

Mr. Mason provided the current status of the Fund, which is sufficient to pay the 2Q2021 reimbursement requests.

5. Status of County Compliance

A. Clark County Chief PD Salary Compliance

At the Commission meeting on June 16, 2021, the Commission reduced reimbursement to Clark County based on 40 percent of the payment for the Clark County Chief Public Defender, finding that the county was paying its chief less than the minimum salary for chiefs. The Clark County Public Defender Board immediately rectified the salary issue at its July meeting, back-dating the salary to make it effective July 1, 2021. The county requested, since they fixed the issue as soon as they received the 90-day letter, they be reimbursed for the Chief’s salary not only from July forward but also for 2Q2021.

Mr. Mason stated that Commission staff recommended full reimbursement in acknowledgement of the immediate change. Judge Hanlon moved to reimburse Clark County in full for 2Q2021, noting that the Commission should seek to incentivize speedy compliance. Judge Meyer seconded the motion. There were no comments, questions, or objections. The motion carried unanimously.

B. 90-Day Letter Updates

i. Ohio County

Mr. Mason reported that Ohio County also received a 90-day letter. The county has been paying its deputy public defenders about \$12,000 and listing them at .5 FTE. To be in pay parity, the deputies should be listed about .2 FTE – which would lead to caseload compliance problems.

In August, the Ohio County judge responded and indicated that to reach parity or caseload requirement immediately was not financially feasible. The court did not believe the county would be able to obtain appropriations to satisfy the requirements. The court requested permission to finish out the contracts for the calendar year and then amend their comprehensive plan to switch to an hourly rate, paying the public defenders at the required \$90/hour rate. It understood that this option may cost more, but it would allow the county to change its system partway through the year. Mr. Mason agreed that this was likely the best outcome. He further stated that Commission staff would work to update the county's comprehensive plan.

Sen. Taylor asked what assurance the Commission has that the county will be able to increase their budget for the next cycle. Mr. Mason responded that he has spoken to a county commissioner, who represented that they understand they will have to amend their budget.

After additional questions and expressions of concern regarding the issue but not the county's plan, Mr. Bray moved to continue reimbursement as staff recommend, understanding the change to hourly compensation on January 1, 2022. Judge Hanlon seconded the motion. There were no objections. The motion carried unanimously.

ii. Multi-County Attorney Issues

Decatur, Fayette, and Ripley Counties have been using some of the same attorneys, with the result that the attorneys are out of caseload compliance when considering their caseload in all three counties. The first 90-day letter for this issue was sent to these three counties. One attorney, John Dorenbusch, is now in quarterly compliance and should be in yearly compliance by the end of the year. Steps have also

been taken to reduce Spencer Gilland's caseload; it will take multiple quarters, but if the plan is followed, he will also come into compliance. Commission staff will continue monitoring the situation. Mr. Mason recommended continued monitoring for caseload compliance.

The Chair inquired whether the problem is intentional or not paying attention. Mr. Mason responded that particularly in this area, it is difficult to find attorneys and avoid overuse; the noncompliance is unintentional.

Judge Meyer moved to adopt the staff recommendation. Judge Diekhoff seconded the staff recommendation. There were no comments, concerns, or objections. The motion carried unanimously.

iii. Other Compliance issues

Mr. Mason reported that most non-compliant counties only have one attorney who is out of compliance; Elkhart has 2 attorneys out of compliance, but they are planning to hire two attorneys who will start on January 1, 2022, which should resolve their issues. All counties with non-compliant attorneys have a plan to attain compliance. In addition to the multi-county issue already discussed, Blackford and Jay counties also have a multi-county attorney problem; they have a plan to resolve their situation within one to two quarters. Based on the counties' compliance, Mr. Mason recommended reimbursement for all counties. There were no comments, questions, or concerns.

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

Mr. Mason explained that Commission staff have added a column for prior quarter adjustments to the reimbursement request table (see attached spreadsheet). He highlighted adjustments in Elkhart, Green, and Wabash counties. There were no comments, questions, or concerns. Mr. Hensel moved to approve the second quarter 2021 requests for reimbursement. Sen. Taylor seconded the motion. There were no objections. The motion passed unanimously.

7. Local Public Defender Board Appointments

Mr. Cullen informed the Commission that all the appointments this quarter are uncontested. Clinton County and Jefferson County want to reappoint current

members, Eric Spencer and Robert Little, respectively. Elkhart County is recommending a new member to fill a term ending December 2022. Ian Forte, the Elkhart nominee, is a well-respected attorney who does not practice criminal law. Commission staff recommended the Commission appoint these three individuals to their respective county boards.

Sen. Taylor inquired whether the Elkhart County board includes any people of color and stated that the Commission should consider that, particularly in high minority areas. The Chair stated that Commission staff will note that request.

There were no other comments or questions. Ms. Corley moved to appoint the three consensus candidates. Judge Diekhoff seconded the motion. There were no additional questions, concerns, or objections. The motion carried unanimously.

8. Legislative & Policy Updates (Including Statewide Counsel at First Appearance Survey Results)

Mr. Cullen reported that Commission staff have been working with the General Assembly's interim study committees on topics of interest to the Commission. In particular, Sen. Sue Glick is chair of the Interim Study Committee on Corrections and Criminal Code, which has been looking at counsel at first appearance (CAFA). A coalition of groups has been lobbying the committee for additional CAFA funding. Mr. Cullen presented at the first hearing, and Sen. Glick asked the Commission for a proposal. Commission staff conducted a statewide survey and presented their findings to the committee. The proposal would amend the Commission's authorizing statute to allow (but not require) misdemeanor reimbursement at 40% and CAFA reimbursement at 80 percent. Mr. Cullen argues that this does not have a fiscal impact due to its "may" language.

Sen. Taylor asked about an anticipated cost. Mr. Mason responded that Commission staff estimate about \$10 million for misdemeanor reimbursement and for counsel at first appearance. Judge Hanlon inquired about the suggested 80 percent reimbursement for counsel at first appearance. Mr. Cullen said the number was not set in stone. It had been suggested that the rate should be higher than the 40 percent for other reimbursement, and Commission staff decided to double the 40 percent. Mr.

Mason elaborated that having something doubled makes reimbursement easier. Additionally, he recalled a prior conversation at the legislature regarding 75 or 80 percent reimbursement for chief public defender expenses. If the 80 percent for CAFA were enacted, it would provide a number in statute that could be of relevance for the chief reimbursement discussion if that issue were to arise again.

9. Chief Public Defender Request: Retirement Compensation

The Chair stated that Mr. Abbs would be allowed to present first. Mr. Abbs stated that the county audit issue, which he had previously raised, has been worked out between the chiefs and Commission staff. Regarding retirement compensation, Mr. Abbs told the Commission that the Chiefs Association has gone to the legislature requesting retirement compensation parity with prosecutors. He stated his position that the Commission should eliminate the provision in Standard G that states retirement benefits are not included in the pay parity analysis. He further asked the Commission to help the Chiefs Association lobby the General Assembly to provide retirement compensation to chief public defenders.

Judge Meyer inquired how Mr. Abbs expected the change to occur: would the money come from the county, to be reimbursed by the Commission, or would it flow through the State like judges and prosecutors. Mr. Abbs expressed his preference for the latter option.

Mr. Mason referenced the commentary from Commission staff on this topic in the materials, Mr. Abbs' letter, the actuarial letter, and a Commission staff summary. He noted that the pension would be a huge burden on the counties and that it could jeopardize new counties joining the Commission. Removing the Standard G provision regarding retirement benefits could also have a significant impact on counties for other positions as well. Mr. Mason thus recommended caution in moving forward with this proposal. He recommended that a working group be established staffed by the Commission, the Public Defender Council, and the Chiefs Association, that could move toward a solution. The working group could develop a proposal and present it to the Commission.

Commission members offered support for the idea of retirement benefits and the goal of finding and keeping good attorneys to be chiefs, but they expressed concern about how to make it work without imposing significant burdens on the counties. Ms. Corley requested that this issue be taken up at the December meeting. The Chair affirmed that it would be on the agenda.

10. Staff Update: Public Comment and At-Risk Youth & Family Submissions

Mr. Mason informed the Commission that Commission staff have extended the deadline to November 18, 2021, for public comment on the proposed standards changes. Commission staff expect to review the public comments and decide at the December 2021 Commission meeting.

Mr. Mason noted that the Commission has received a small number of proposals for the At Risk Youth and Family funds provided by the legislature. Commission staff hope to present the proposals for consideration at the December meeting.

The Commission has extended an offer of employment to Stephanie Lalani for a fiscal analyst position. Her role will primarily focus on helping counties obtain Title IV-E reimbursement with the Commission. She will start October 4, 2021. Her position will be funded out of the At Risk Youth and Family funds.

Mr. Mason also noted that Commission staff will be conducting its annual training for the counties at the end of October.

11. Other Matters

Judge Meyer moved to adjourn the meeting. Mr. Bray seconded the motion. There were no objections. The meeting was adjourned at 3:23 p.m.

INDIANA PUBLIC DEFENDER COMMISSION

Second Quarter 2021 Requests for Reimbursements in Non-Capital Cases

9/22/2021

County	Non-			Eligible Expenditure	Total Payment	Project Portion 025IVEFPCDAMF21	PDCom Portion	Prior Quarter Adjustment
	Total Expenditure	reimbursable Adjustment	% Adjusted					
Adams	\$122,706.86	\$27,310.88	22.26%	\$95,395.98	\$ 38,158.39	\$ 3,403.13	\$34,755.26	
Allen	\$1,142,795.98	\$75,834.19	6.64%	\$1,066,961.79	\$ 426,784.72	\$ 18,140.51	\$408,644.21	
Benton	\$13,244.40	\$1,798.97	13.58%	\$11,445.43	\$ 4,578.17	\$ -	\$4,578.17	
Blackford	\$51,362.25	\$10,385.94	20.22%	\$40,976.31	\$ 16,390.53	\$ 315.11	\$16,075.42	
Brown	\$58,452.80	\$18,352.86	31.40%	\$40,099.94	\$ 16,039.98	\$ 194.53	\$15,845.45	
Carroll	\$64,022.75	\$20,674.91	32.29%	\$43,347.84	\$ 17,339.14	\$ 197.42	\$17,141.72	
Cass	\$176,864.03	\$24,116.98	13.64%	\$152,747.05	\$ 61,098.82	\$ 1,108.10	\$59,990.72	
Clark	\$388,009.33	\$18,154.14	4.68%	\$369,855.19	\$ 147,942.08	\$ 3,788.47	\$144,153.61	
Clinton	\$72,420.03	\$18,605.73	25.69%	\$53,814.30	\$ 21,525.72	\$ 74.47	\$21,451.25	
Decatur	\$106,309.73	\$24,772.82	23.30%	\$81,536.91	\$ 32,614.76	\$ 71.40	\$32,543.36	
Dekalb	\$185,763.94	\$18,084.14	9.74%	\$167,679.80	\$ 67,071.92	\$ 940.85	\$66,131.07	
Delaware	\$353,587.70	\$907.98	0.26%	\$352,679.72	\$ 141,071.89	\$ 6,300.90	\$134,770.99	
Elkhart	\$720,878.43	\$106,147.95	14.72%	\$614,730.48	\$ 242,813.79	\$ 3,228.35	\$242,663.84	-\$3,078.40
Fayette	\$86,204.98	\$14,545.64	16.87%	\$71,659.34	\$ 28,663.74	\$ 1,416.46	\$27,247.28	
Floyd	\$204,976.55	\$9,899.94	4.83%	\$195,076.61	\$ 78,030.64	\$ 4,176.49	\$73,854.15	
Fountain	\$24,530.67	\$7,040.77	28.70%	\$17,489.90	\$ 6,995.96	\$ 134.75	\$6,861.21	
Fulton	\$92,627.06	\$24,803.47	26.78%	\$67,823.59	\$ 27,129.43	\$ 1,494.14	\$25,635.29	
Gibson	\$263,671.50	\$21,519.44	8.16%	\$242,152.06	\$ 96,860.83	\$ 1,989.26	\$94,871.57	
Grant	\$266,469.98	\$6,899.26	2.59%	\$259,570.72	\$ 103,828.29	\$ 3,406.96	\$100,421.33	
Greene	\$158,227.74	\$26,021.93	16.45%	\$132,205.81	\$ 55,843.45	\$ 1,785.96	\$51,096.36	\$2,961.13
Hancock	\$94,667.87	\$7,316.30	7.73%	\$87,351.57	\$ 34,940.63	\$ 2,502.92	\$32,437.71	
Harrison	\$149,277.97	\$15,142.21	10.14%	\$134,135.76	\$ 53,654.31	\$ -	\$53,654.31	
Hendricks	\$447,624.43	\$77,945.76	17.41%	\$369,678.67	\$ 147,871.47	\$ 3,658.09	\$144,213.38	
Howard	\$577,395.88	\$61,486.75	10.65%	\$515,909.13	\$ 206,363.65	\$ 7,197.74	\$199,165.91	
Jackson	\$184,547.61	\$7,359.71	3.99%	\$177,187.90	\$ 70,875.16	\$ 3,104.29	\$67,770.87	
Jasper	\$99,149.93	\$43,318.49	43.69%	\$55,831.44	\$ 22,332.58	\$ 359.01	\$21,973.57	
Jay	\$117,546.06	\$17,404.76	14.81%	\$100,141.30	\$ 40,056.52	\$ 1,576.53	\$38,479.99	
Jefferson	\$205,963.02	\$25,203.26	12.24%	\$180,759.76	\$ 72,303.91	\$ 1,468.89	\$70,835.02	
Jennings	\$131,352.14	\$17,649.43	13.44%	\$113,702.71	\$ 45,481.08	\$ 844.23	\$44,636.85	
Knox	\$223,732.21	\$47,468.30	21.22%	\$176,263.91	\$ 70,505.56	\$ 1,929.08	\$68,576.48	
Kosciusko	\$264,883.24	\$89,868.92	33.93%	\$175,014.32	\$ 70,005.73	\$ 1,592.47	\$68,413.26	
LaGrange	\$85,861.71	\$14,023.03	16.33%	\$71,838.68	\$ 28,735.47	\$ 1,290.30	\$27,445.17	
Lake	\$1,342,596.39	\$7,326.45	0.55%	\$1,335,269.94	\$ 534,107.98	\$ -	\$534,107.98	
LaPorte	\$273,704.56	\$24,241.65	8.86%	\$249,462.91	\$ 99,785.16	\$ 2,790.67	\$96,994.49	
Lawrence	\$208,802.93	\$36,561.71	17.51%	\$172,241.22	\$ 68,896.49	\$ 3,012.56	\$65,883.93	
Madison	\$534,214.54	\$14,172.14	2.65%	\$520,042.40	\$ 208,016.96	\$ 7,825.94	\$200,191.02	
Marion	\$648,160.29	\$581,684.34	8.97%	\$5,901,475.95	\$ 2,360,590.38	\$ 84,296.04	\$2,276,294.34	
Martin	\$58,565.71	\$8,256.55	14.10%	\$50,309.16	\$ 20,123.67	\$ 1,196.94	\$18,926.73	
Miami	\$160,961.63	\$23,076.96	14.34%	\$137,884.67	\$ 55,153.87	\$ 730.64	\$54,423.23	
Monroe	\$574,706.38	\$76,479.83	13.31%	\$498,226.55	\$ 199,290.62	\$ 9,195.08	\$190,095.54	
Noble	\$247,512.02	\$41,180.05	16.64%	\$206,331.97	\$ 82,532.79	\$ 2,056.52	\$80,476.27	
Ohio	\$22,464.74	\$4,559.37	20.30%	\$17,905.37	\$ 7,162.15	\$ -	\$7,162.15	
Orange	\$200,427.69	\$41,088.80	20.50%	\$159,338.89	\$ 63,735.56	\$ 3,018.74	\$60,716.82	
Owen	\$98,361.03	\$16,410.24	16.68%	\$81,950.79	\$ 32,780.32	\$ 1,728.07	\$31,052.25	
Parke	\$43,251.52	\$9,248.99	21.38%	\$34,002.53	\$ 13,601.01	\$ 168.40	\$13,432.61	
Perry	\$71,721.64	\$9,102.59	12.69%	\$62,619.05	\$ 25,047.62	\$ 3,052.37	\$21,995.25	
Pike	\$50,698.60	\$1,911.07	3.77%	\$48,787.53	\$ 19,515.01	\$ 1,740.44	\$17,774.57	
Pulaski	\$102,198.36	\$32,189.03	31.50%	\$70,009.33	\$ 28,003.73	\$ 1,124.59	\$26,879.14	
Ripley	\$54,804.40	\$5,467.74	9.98%	\$49,336.66	\$ 19,734.66	\$ 584.20	\$19,150.46	
Rush	\$118,969.51	\$11,999.64	10.09%	\$106,969.87	\$ 42,787.95	\$ 1,909.87	\$40,878.08	
Scott	\$135,069.22	\$14,377.86	10.64%	\$120,691.36	\$ 48,276.54	\$ 2,580.16	\$45,696.38	
Shelby	\$182,397.39	\$25,449.99	13.95%	\$156,947.40	\$ 62,778.96	\$ 1,625.23	\$61,153.73	
Spencer	\$109,708.67	\$14,048.34	12.81%	\$95,660.33	\$ 38,264.13	\$ 3,405.15	\$34,858.98	
Steuben	\$104,873.11	\$33,744.96	32.18%	\$71,128.15	\$ 28,451.26	\$ 1,453.05	\$26,998.21	
StJoseph	\$638,086.54	\$63,067.17	9.88%	\$575,019.37	\$ 230,007.75	\$ 9,082.62	\$220,925.13	
Sullivan	\$86,647.79	\$25,076.40	28.94%	\$61,571.39	\$ 24,628.56	\$ 1,405.23	\$23,223.33	
Switzerland	\$60,524.23	\$12,966.45	21.42%	\$47,557.78	\$ 19,023.11	\$ 328.64	\$18,694.47	
Tippecanoe	\$1,131,867.57	\$208,945.27	18.46%	\$922,922.30	\$ 369,168.92	\$ 11,571.19	\$357,597.73	
Union	\$21,015.00	\$4,036.15	19.21%	\$16,978.85	\$ 6,791.54	\$ -	\$6,791.54	
Vanderburgh	\$825,735.33	\$50,596.31	6.13%	\$775,139.02	\$ 310,055.61	\$ 11,674.69	\$298,380.92	
Vermillion	\$62,389.92	\$19,574.18	31.37%	\$42,815.74	\$ 17,126.30	\$ 486.09	\$16,640.21	
Vigo	\$881,517.60	\$143,500.85	16.28%	\$738,016.75	\$ 295,206.70	\$ 10,977.07	\$284,229.63	
Wabash	\$143,432.41	\$21,900.12	15.27%	\$121,532.29	\$ 48,455.96	\$ 2,027.99	\$46,584.93	-\$156.96
Warren	\$21,415.70	\$3,901.00	18.22%	\$17,514.70	\$ 7,005.88	\$ 476.08	\$6,529.80	
Warrick	\$138,880.28	\$28,587.59	20.58%	\$110,292.69	\$ 44,117.08	\$ 198.21	\$43,918.87	
Washington	\$185,484.09	\$20,844.45	11.24%	\$164,639.64	\$ 65,855.86	\$ 1,525.77	\$64,330.09	
Totals	\$22,511,295.57	\$2,535,639.10		\$19,975,656.47	\$ 7,989,988.41			-\$274.23
*Potential Reduction for Chief Benefits & Salary in Clark:			\$	16,679.56	\$ 7,973,308.85			