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INDIANA PUBLIC DEFENDER COMMISSION

June 14, 2023 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)

Sen. Eric Koch (remote)

Rep. Ryan Lauer (in person)

Hon. Steven P. Meyer (in person)

Sen. Gregory G. Taylor (remote)

Members absent:

Ms. Samantha DeWester

Rep. Ragen Hatcher

Staff in attendance:

Derrick Mason (in person)

Andrew Cullen (in person)

Andrew Falk (remote)

Linda Hunter (in person)

Stephanie Lalani (remote)

Torrin Liddell (remote)

Jennifer Pinkston (remote)

Audience members:

Jim Abbs, Noble County Chief Public Defender and President, Chiefs

Association (remote)

Ray Casanova, Marion County Public

Defender Agency (in person)

Sabra Northam, Hallowell Consultants

(remote)

Steve Owens, Vanderburgh County

Chief Public Defender (in person)

Andrew Scheer, Intern to Andrew Falk (remote)

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

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

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

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

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

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

3. Fiscal Year 2024 Internal Budget

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

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

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

Mr. Mason noted that changes to the internal budget may be necessary during the fiscal year because the agency will be moving to new leased space in December 2023. The current lease expires at the end of 2023 and the new rent will be significantly higher, wherever the agency leases next. There is no available space in the Government Center. To remain in the Commission's current space, the Commission would incur significant increases in costs because the Public Defender Council will no longer be paying for part of the Commission's floor.

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

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

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

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

4. Status of County Compliance

a. Howard & Vanderburgh County Follow-ups

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Individual and Multi-County Compliance Updates

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

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

5. Requests for Reimbursement

a. 50% Reimbursement in Death Penalty Cases

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

INDIANA PUBLIC DEFENDER COMMISSION

Reimbursement Requests in Capital Cases June 14, 2023

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

LATE CLAIMS

Madison	Boards	\$8,907.45				
TOTAL		\$62,879.69				

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

b. 40% Reimbursement in Non-Capital Cases

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

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

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

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

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

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

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

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

7. Local Public Defender Board Appointments

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

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

8. Legislative & Policy Updates

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

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

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

9. Other Matters

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

Appendix 1

INDIANA PUBLIC DEFENDER COMMISSION

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

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

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