

DRAFT

INDIANA PUBLIC DEFENDER COMMISSION

June 15, 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 (in person)
Ms. Samantha DeWester (in person)
Hon. Kelsey B. Hanlon (remote)
Mr. David J. Hensel (remote)
Sen. Eric Koch (remote)
Rep. Ryan Lauer (in person)

Members absent:

Hon. Mary Ellen Diekhoff
Rep. Ragen Hatcher
Hon. Steven P. Meyer
Sen. Gregory G. Taylor

Staff in attendance:

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

Audience members (all remotely):

Jim Abbs, Noble County Chief Public
Defender and President, Chiefs
Association
Ray Casanova, Marion County Public
Defender Agency
Gretchen Eting, Vigo County Chief
Public Defender
Amy Karazos, State Public Defender
Alan Marshall, Jackson County Chief
Public Defender
Michael Slagle, Chief, West Central
Indiana Public Defender Office

At 2:12 p.m., Chair Mark Rutherford called the meeting to order. Due to quorum issues, the Chair elected to address items in an order different from the posted agenda.

1. 90-Day Letter Response: Jackson County

Mr. Mason reminded the Commission that at the March meeting, the Commission authorized a 90-day letter to Jackson County, at the request of the Chief. Since receiving the letter, the County Council has authorized converting four .25 FTE contractors to .5 FTE beginning July 1, 2022, through the end of the year. Mr. Mason recommended full reimbursement with continued monitoring of the status of the county's 2023 budget.

There were no objections to this recommendation.

2. Status of County Compliance

Mr. Mason provided an overview of counties with compliance issues. Commission staff are reviewing assignments to attorneys who have received assignments in multiple counties. Many of the appointments are through the State Public Defender office, but Commission staff are not certain that they have received notice of all the appointments. Staff is working with all parties to remedy this matter.

Another compliance issue, not included in the materials, arose in Steuben County, which for about the last year has been assigning major felony cases to an attorney who is not qualified to receive these types of cases. Commission staff have repeatedly notified the county of the problem, and it has hurt the county's reimbursement (i.e., the county is not reimbursed for the major felonies assigned to the attorney). Mr. Mason recommended sending a 90-day letter to Steuben County requesting the county provide an explanation of the plan to remedy this compliance issue.

Rep. Lauer inquired what it meant that the attorney was not qualified to receive this type of case assignment. Mr. Mason responded that the attorney lacks the qualification due to length of experience and/or the number of jury trials in which the attorney has participated. Ms. DeWester pointed out that unqualified attorneys on cases often lead to appeals based on claims of ineffective assistance of counsel, which ultimately costs the county and state more to manage the case.

There were no objections to sending a 90-day letter to Steuben County regarding this attorney noncompliance issue. The recommendation to send the letter was approved.

3. Requests for Reimbursement:

a. 50% Reimbursement in Death Penalty Cases

Marion and Clinton Counties requested reimbursement for capital cases (see table below). Both counties were in full compliance, so Mr. Mason recommended reimbursement for both counties without reductions. There were no questions, comments, or objections. The reimbursement requests were approved.

Reimbursement Requests in Capital Cases June 15, 2022		
COUNTY	DEFENDANT	TOTAL
Clinton	Ferrell	\$30,281.35
Marion	Dorsey	\$1,019.18
TOTAL		\$31,300.53

b. 40% Reimbursement in Non-Capital Cases

Mr. Mason reported that the total reimbursement request for the first quarter of 2022 is \$7,732,474.96 (see table below). All Commission counties are receiving reimbursements. The reimbursement is reduced by \$2,196.40 due to a desk audit of Elkhart County, which double-billed for one attorney. Mr. Mason recommended reimbursement. There were no questions, comments, or objections. The reimbursement requests were approved.

First Quarter 2022 Requests for Reimbursements in Non-Capital Cases

6/15/2022

County	Total Expenditure	Non-reimbursable Adjustment	% Adjusted	Eligible Expenditure	Adjustments	40% Reimbursed
Adams	\$110,872.18	\$22,431.49	20.23%	\$88,440.69		\$35,376.28
Allen	\$1,193,001.09	\$86,539.15	7.25%	\$1,106,461.94		\$442,584.78
Benton	\$33,148.60	\$7,170.13	21.63%	\$25,978.47		\$10,391.39
Blackford	\$51,743.75	\$4,316.42	8.34%	\$47,427.33		\$18,970.93
Brown	\$38,504.08	\$12,585.78	32.69%	\$25,918.30		\$10,367.32
Carroll	\$78,142.78	\$9,332.40	11.94%	\$68,810.38		\$27,524.15
Cass	\$194,088.50	\$25,867.69	13.33%	\$168,220.81		\$67,288.32
Clark	\$437,345.15	\$30,106.09	6.88%	\$407,239.06		\$162,895.62
Clinton	\$64,813.99	\$14,384.64	22.19%	\$50,429.35		\$20,171.74
Crawford	\$46,772.06	\$7,746.33	16.56%	\$39,025.73		\$15,610.29
Decatur	\$114,057.75	\$24,082.41	21.11%	\$89,975.34		\$35,990.14
DeKalb	\$205,193.21	\$18,893.02	9.21%	\$186,300.19		\$74,520.08
Delaware	\$367,465.33	\$580.37	0.16%	\$366,884.96		\$146,753.99
Elkhart	\$819,574.96	\$107,252.32	13.09%	\$712,322.64	-\$2,196.40	\$282,732.66
Fayette	\$89,661.87	\$12,202.03	13.61%	\$77,459.84		\$30,983.94
Floyd	\$231,726.69	\$10,913.47	4.71%	\$220,813.22		\$88,325.29
Fountain	\$32,609.97	\$5,499.55	16.86%	\$27,110.42		\$10,844.17
Fulton	\$97,521.50	\$28,897.40	29.63%	\$68,624.10		\$27,449.64
Gibson	\$157,546.79	\$23,120.39	14.68%	\$134,426.40		\$53,770.56
Grant	\$296,398.04	\$1,694.25	0.57%	\$294,703.79		\$117,881.52
Greene	\$141,846.02	\$25,414.30	17.92%	\$116,431.72		\$46,572.69
Hancock	\$170,312.47	\$7,356.05	4.32%	\$162,956.42		\$65,182.57
Harrison	\$166,654.39	\$17,198.36	10.32%	\$149,456.03		\$59,782.41
Hendricks	\$485,095.14	\$95,012.73	19.59%	\$390,082.41		\$156,032.96
Howard	\$481,507.75	\$40,496.71	8.41%	\$441,011.04		\$176,404.42
Jackson	\$206,718.51	\$5,543.97	2.68%	\$201,174.54		\$80,469.82
Jasper	\$99,057.54	\$32,043.74	32.35%	\$67,013.80		\$26,805.52
Jay	\$107,559.52	\$26,760.17	24.88%	\$80,799.35		\$32,319.74
Jefferson	\$206,618.70	\$23,022.78	11.14%	\$183,595.92		\$73,438.37
Jennings	\$124,753.19	\$12,542.98	10.05%	\$112,210.21		\$44,884.08
Knox	\$215,551.86	\$30,146.94	13.99%	\$185,404.92		\$74,161.97
Kosciusko	\$249,307.16	\$77,675.52	31.16%	\$171,631.64		\$68,652.66
LaGrange	\$59,206.57	\$10,107.18	17.07%	\$49,099.39		\$19,639.76
Lake	\$1,494,693.71	\$9,544.15	0.64%	\$1,485,149.56		\$594,059.82

LaPorte	\$272,700.79	\$20,469.75	7.51%	\$252,231.04	\$100,892.42
Lawrence	\$254,341.39	\$39,745.22	15.63%	\$214,596.17	\$85,838.47
Madison	\$510,476.10	\$9,202.92	1.80%	\$501,273.18	\$200,509.27
Marion	\$5,850,010.23	\$597,073.89	10.21%	\$5,252,936.34	\$2,101,174.54
Martin	\$58,081.14	\$17,157.89	29.54%	\$40,923.25	\$16,369.30
Miami	\$195,564.05	\$36,760.49	18.80%	\$158,803.56	\$63,521.42
Monroe	\$595,662.04	\$114,099.33	19.16%	\$481,562.71	\$192,625.09
Noble	\$249,472.30	\$48,957.11	19.62%	\$200,515.19	\$80,206.07
Ohio	\$19,572.99	\$2,708.20	13.84%	\$16,864.79	\$6,745.91
Orange	\$80,848.46	\$13,783.52	17.05%	\$67,064.94	\$26,825.98
Owen	\$86,948.38	\$20,767.44	23.88%	\$66,180.94	\$26,472.38
Parke	\$58,021.62	\$13,267.02	22.87%	\$44,754.60	\$17,901.84
Perry	\$37,045.71	\$3,690.11	9.96%	\$33,355.60	\$13,342.24
Pike	\$36,299.26	\$256.79	0.71%	\$36,042.47	\$14,416.99
Pulaski	\$77,825.70	\$19,440.09	24.98%	\$58,385.61	\$23,354.24
Ripley	\$56,655.56	\$7,514.54	13.26%	\$49,141.02	\$19,656.41
Rush	\$93,956.08	\$10,759.58	11.45%	\$33,278.60	\$33,278.60
Scott	\$106,901.17	\$9,586.58	8.97%	\$97,314.59	\$38,925.84
Shelby	\$130,642.15	\$14,496.42	11.10%	\$116,145.73	\$46,458.29
Spencer	\$108,813.45	\$13,706.80	12.60%	\$95,106.65	\$38,042.66
Steuben	\$110,975.05	\$37,369.10	33.67%	\$73,605.95	\$29,442.38
St. Joseph	\$673,428.05	\$69,935.70	10.39%	\$603,492.35	\$241,396.94
Sullivan	\$64,852.85	\$16,963.70	26.16%	\$47,889.15	\$19,155.66
Switzerland	\$47,074.05	\$4,330.83	9.20%	\$42,743.22	\$17,097.29
Tippecanoe	\$1,001,322.78	\$134,064.07	13.39%	\$346,903.48	\$346,903.48
Union	\$28,021.50	\$9,555.00	34.10%	\$18,466.50	\$7,386.60
Vanderburgh	\$787,385.80	\$54,414.29	6.91%	\$732,971.52	\$293,188.61
Vermillion	\$65,256.25	\$21,005.81	32.19%	\$17,700.17	\$17,700.17
Vigo	\$788,390.77	\$133,614.05	16.95%	\$654,776.72	\$261,910.69
Wabash	\$127,919.80	\$19,312.13	15.10%	\$108,607.67	\$43,443.07
Warren	\$6,754.00	\$2,236.00	33.11%	\$4,518.00	\$1,807.20
Warrick	\$139,126.24	\$10,446.42	7.51%	\$128,679.82	\$51,471.93
Washington	\$165,676.17	\$25,242.72	15.24%	\$140,433.45	\$56,173.38
Totals	\$21,755,092.70	\$2,418,414.42	\$10.36	\$18,739,854.89	-\$2,196.40 \$7,732,474.96

4. Approval of Amended Comprehensive Plan: Madison County

Mr. Mason introduced the Madison County Amended Comprehensive Plan, which makes two primary changes: (a) it ties its hourly rate to the Commission's hourly rate automatically and (b) it amends the amount of expenses the Chief Public Defender can approve. In reviewing the plan, Commission staff found scriveners'

errors that need to be corrected as well as updated language that needs to be added to comply with the Commission's Standard E juvenile delinquency qualifications. Mr. Mason requested approval of the plan, assuming the county accepts the Commission's changes.

Ms. Corley inquired whether the Commission needed to adopt the plan immediately. Mr. Mason explained that normally, the answer would be no. The county has adopted this plan, however, and technically the revised plan must be approved by the Commission prior to reimbursement. Ms. Corley asked whether Mr. Mason anticipated any objections from the county to the requested Commission staff changes to the plan. He responded that he does not expect any pushback, but if there were, he would indicate that approval is based on addressing the scrivener's errors and updating the juvenile standard language.

Judge Hanlon moved to approve the amended Madison County Comprehensive Plan, subject to addition of the juvenile delinquency qualification language and correction of the scrivener's errors. Ms. DeWester seconded the motion. There were no questions, comments, or objections. The motion carried and the plan was approved.

5. Standard G Guideline Amendment

Mr. Mason informed the Commission that every year, after elected prosecutor and deputy prosecutor salaries are adjusted, the Commission votes to give the counties until January 1 of the following year to adopt an identical adjustment. He recommended that the Commission approve an amendment to the non-capital Guideline to Standard G providing that the counties must adjust the salaries of their chief and chief deputy public defender every year by January 1 of the following year.

The following language was proposed:

To better align with county budget cycles, when salaries are adjusted for county elected prosecutors and chief deputy prosecutors, the identical adjustments required by Standard G for Chief and Chief Deputy Public

Defenders must be implemented no later than January 1 of the following year.

Ms. Corley moved to adopt the proposed amendment. Ms. DeWester seconded the motion. There were no questions, comments, or objections. The motion carried.

The Chair requested that Mr. Mason send the language of the new guideline to the full Commission.

6. Standard H: Hourly Rate

Commission staff have been participating in an ad hoc group with the Public Defender Council considering revisions to the Commission's standards. One of the changes discussed has been an adjustment to the Commission's rate for hourly attorneys. Jim Abbs, as President of the Chiefs Association, wrote a letter to the Commission requesting that the hourly rate be increased to 85% of the capital rate. Mr. Mason noted that until 2012, the hourly rate was set at \$60 per hour, at which time it was raised to \$70 per hour. In 2016, it was increased to \$90 per hour, which is still the current rate.

Mr. Mason observed that there has been little pushback from these increases, but there is a fiscal impact on PD systems and the Commission. He indicated that one of the suggestions from the ad hoc group is tying the hourly rate to the Criminal Rule 24 capital rate (set by the Supreme Court), which will rise to \$136 on January 1, 2023.

He raised two concerns, however, with an hourly rate that is 85% of the capital rate (85% of the current capital rate is \$110, and it is \$115 under the new rate as of January 1, 2023). First, the 85% rate would be a \$25 per hour increase under the new \$136 rate (from \$90 to \$115). Second, Mr. Mason noted that the most skilled attorneys working on capital cases would only be paid \$21 an hour more than hourly attorneys working on everything from major felonies to misdemeanors (\$136 vs. \$115). For these two reasons, he believed an 85% rate would be a hard sell to the Commission counties. He thus recommended that the hourly rate be tied to the capital rate under Criminal Rule 24, but at 75%, rounded to the nearest \$10.

The Chair observed that the current market instability requires some flexibility on this, because we are in a very interesting economic time.

Jim Abbs stated for the Chiefs Association that he agreed with tying the hourly rate to the capital rate. He noted that in the Chiefs Association meeting, the Lake County chief moved to make the rate 85% of the capital rate, and the motion was seconded by Marion County, which Mr. Abbs believes shows the larger counties are trying to make the hourly rate more competitive and help them find and recruit hourly attorneys. He indicated that the Chiefs wished to see the rate hit \$100/hour.

Ms. DeWester moved to adopt the staff recommendation to tie the hourly rate to the capital rate, at 75%, rounded to the nearest \$10. Ms. Corley seconded the motion. There were no questions, comments, or objections. The motion carried.

Standard H will thus be amended to read, in relevant part:

Hourly Rate. Counsel shall be compensated for time actually expended at the hourly rate of not less than 75% of the capital rate required under Criminal Rule 24, rounded, up or down, to the nearest \$10/hour. The effective date of any increases shall tier with the capital rate increases (January 1 of odd-numbered years).

7. Local Public Defender Board Appointments

Mr. Cullen asked the Commission to approve the Chair's interim appointment of local attorney Mark Christoff to the board of the recently formed West Central Indiana Public Defender Office (WCIPDO) for a term of three years. Mr. Christoff has served on the Fountain County board and is the consensus candidate for all three counties in the WCIPDO. Judge Hanlon moved to approve the Chair's interim appointment. Ms. DeWester seconded the motion. There were no questions, comments, or objection. The motion carried.

8. Legislative & Policy Updates

A. Base Budget/Misdemeanor Funding

Mr. Cullen stated there were two issues Commission staff were asking the Commission to approve. First, he provided an update on the budget and

misdemeanor funding. Commission staff is working with the State Budget Agency in an attempt to include both the Commission's base budget increase and misdemeanor funding in the Governor's budget. This was done in 2021 and significantly eased the process. In addition, Rep. Greg Steuerwald has agreed to support and shepherd the Commission request through the House, and Sen. Liz Brown will support and help move both the Commission's base budget increase and misdemeanor funding through the Senate.

Thus, Mr. Cullen asked the Commission to affirm that a base budget increase and securing misdemeanor funding are the top priorities for the 2023 legislative session and authorize the Executive Director (in consultation with the Commission Chair) to take all necessary steps to pursue those priorities.

There were no questions or concerns. Ms. DeWester moved to adopt the staff recommendation. Ms. Corley seconded the motion. There were no objections. Sen. Koch and Rep. Lauer abstained. The motion carried.

B. Public Defender Retirement System

The second legislative issue, Mr. Cullen said, is the goal of establishing a retirement fund for chief and chief deputy public defenders, as well as the number one and two people at that Public Defender Council, Commission, and State Public Defender. The fiscal impact would be about two to three million dollars per year. The goal is to have INPERS include the account as a line item in their budget. The staff recommendation was to authorize staff to work with all parties to advance this concept, with the understanding that a final Commission approval would be considered at the September meeting once a bill and fiscal impact statement was finalized.

Mr. Cullen explained the legislative process through which this proposal will still need to go. Rep. Lauer asked what chiefs do for retirement now. Mr. Cullen responded that some chiefs have access to PERF, while others do not. Some are county employees, while others are independent contractors, and others are neither.

This proposal would allow employees to stay in PERF or allow them to buy into this program; those details need to be worked out.

Sen. Koch indicated that he believes this will help with recruitment and retention and it appears to have some good support. He asked to abstain from the vote, however, due to his dual role on the Commission and as a legislator.

The Chair reiterated that the staff recommendation is to approve Commission staff to work with all the parties involved to advance this concept, with the understanding that final Commission approval of the matter will be considered in September once a proposed bill has been finalized.

Ms. DeWester moved to approve the staff recommendation. Judge Hanlon seconded the motion. There were no further questions, comments, or objections. Sen. Koch and Rep. Lauer abstained. The motion carried.

9. Approval of Internal Budget for FY 23

Mr. Mason requested that the Commission approve \$50,000 for contractual lobbying assistance.

Ms. Corley asked what advantage a contract lobbyist would provide, since the Commission has experienced staff with relationships in the legislature. Mr. Mason stated that the advantage would be hiring someone to focus on misdemeanor reimbursement and other key priorities, whereas staff deal with many different areas. Mr. Cullen reiterated that if misdemeanor reimbursement does not get on the Governor's budget, this is the year the Commission needs to pull out all the stops and give our very best effort to secure this goal. Ms. Corley asked what the Commission would be looking for in an advocate for criminal defense. Mr. Cullen said he does not have anyone in mind, but he would want someone who understands the legislative process, not a subject matter expert.

On other internal budget issues, Mr. Mason noted that Jennifer Shircliff moved to the Indiana Supreme Court and the Commission is hiring an operations 11 administrator, which will save the Commission some money. The biggest change to the internal budget, however, is the contractual funding.

The Chair noted that there is no requirement that the Commission approve this internal budget, but it is a good practice. Ms. DeWester moved to approve the FY 2023 internal budget (see table below). Judge Hanlon seconded the motion. Rep. Lauer stated that he would abstain from the vote, but also signaled his opposition to the motion based on his belief that current staffing is sufficient to do the legislative work. Mr. Mason noted that in the past, when the Commission had fewer staff, Commission members were crucial as they volunteered to adopt issues and move them through the General Assembly. Ms. Corley stated that the Council always supports the Commission’s fiscal agenda. Sen. Koch abstained. There were no objections, and the motion carried.

FY 2021-2022 Budget		Budget Amount	
Payroll		\$ 878,870.69	
Travel		\$ 16,000.00	
Interagency Charges (IOT, etc)		\$ 20,000.00	
Rentals		\$ 39,000.00	
Admin Ops/Supplies/Misc		\$ 15,000.00	
Contractual		\$ -	
Subtotal		\$ 968,870.69	2.93%
Remaining for Reimbursements		\$32,151,129.31	97.07%
FY 2022-2023 Budget		Budget Amount	
Payroll		\$ 910,000.00	
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		\$ 1,052,000.00	3.18%
Remaining for Reimbursements		\$32,068,000.00	96.82%

Sen. Koch recognized and congratulated Bernice Corley for being selected as a 2022 Distinguished Barrister by the Indiana Lawyer.

12. Other Matters

There were no objections to adjournment. The meeting was adjourned at 3:02 p.m.