

Public Defender  
Commission

# Indiana Public Defense Overhead Costs

## Statewide Survey Results & Findings

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# Executive Summary

## Survey Method/Sample

The Indiana Public Defender Commission initiated a survey to investigate the overhead costs required to support a single, full-time attorney practicing public defense in Indiana. Responses representing costs associated with overhead for 204 attorneys were evaluated in this sample.

## Results

The median overhead-per-attorney in this sample was \$54,455. After accounting for the median overhead amount, this median compensation leaves only \$10,322 in yearly compensation for the attorney, or about \$5.16 per hour, based on a 40-hour work week.

## Previous Surveys

Similar, yet divergent, surveys conducted in the states of North Carolina and Michigan were evaluated in comparison to Indiana's Survey.

North Carolina reported a median overhead amount lower than Indiana's, at \$39,096/year. Michigan reported a median overhead amount higher than Indiana's, at \$99,000/year.

## Summary & Conclusions

In order to maintain true pay parity with county prosecutors, contractual public defense counsel must be compensated in a way that addresses the difference in overhead responsibilities.

**Indiana public defenders require overhead compensation, an increase in general compensation, or both, to provide appropriate pay to contractors, and to maintain true pay parity with county prosecutors.**

## OVERHEAD DEFINED:



**All expenses required to effectively provide public defense services other than direct compensation for attorneys.**

## KEY FINDING:



**Indiana public defenders require overhead compensation, an increase in general compensation, or both, to provide appropriate pay to contractors, and to maintain true pay parity with county prosecutors.**



# Full Report

## I. Background

In the past years, the Indiana Public Defender Commission (Commission) has been investigating issues with current pay parity standards. One issue that has been of particular concern is the overhead cost for contract and part-time attorneys. In this context, overhead is defined as all expenses required to effectively provide public defense services other than direct compensation for attorneys.

**Current Commission pay parity standards require that a public defender be paid the same as an equivalent prosecutor.** However, these standards do not distinguish between full-time salaried public defenders working in an office and part-time or contractual public defenders who do not have their overhead costs covered.

Previous work in Michigan<sup>1</sup> and North Carolina<sup>1</sup> has indicated that overhead costs for providing public defense services are quite significant. In some cases, compensation was not even sufficient to cover overhead, and doing public defense work was only possible for attorneys that could afford to subsidize it via private work.

## Current Commission Pay Parity Standard:



### STANDARD G. COMPENSATION OF SALARIED OR CONTRACTUAL PUBLIC DEFENDERS.

The comprehensive plan (of a county receiving Commission reimbursement) shall provide that the salaries and compensation of full-time salaried public defenders shall be the same as the salaries and compensation provided to deputy prosecutors in similar positions with similar experience in the office of the Prosecuting Attorney. The compensation of contractual public defenders shall be substantially comparable to the compensation provided to deputy prosecutors in similar positions with similar experience in the office of the Prosecuting Attorney.



## II. Survey Method

As a result of these concerns, in June of 2019, the Commission initiated a survey to investigate the overhead costs required to support an attorney practicing public defense. This survey was distributed to attorneys and public defender boards in Indiana via direct e-mail and the DefendNet listserv.

**The goal was to reach all attorneys who practice in areas where a person would be entitled to a public defender, including adult criminal, juvenile delinquency, CHINS/TPR proceedings, and appeals of these case types.** The Commission received 148 responses in two open survey periods from May 30<sup>th</sup> to June 14<sup>th</sup>, and from July 9<sup>th</sup> to July 19<sup>th</sup>.

Respondents first answered two eligibility questions. The first assessed whether the attorney worked in public-defense-relevant fields, and ended the survey if the respondent said they did not. The second question assessed the attorney's status as a public defense services provider. If the respondent indicated they were a full-time salaried public defender working in an office, they were excluded as this survey targeted contract and part-time public defenders.

### Eligibility for inclusion in study:



#1:

**Attorney worked in a public defense-related field.**

#2:

**Attorney received compensation for work as a contract or part-time public defender, NOT as a full-time, salaried public defender.**



### III. Sample

Of the 148 respondents, 40 were full-time salaried public defenders or were otherwise unable to provide any information about overhead. **The results here summarize the remaining 108 responses.**

However, as many respondents were responding for a multi-attorney office, this sample represents approximately 204 attorneys. The responses were screened to ensure that multiple attorneys from the same firm did not provide duplicate responses. No potential duplicates were identified.

Of the 108 responses, 36 provided total yearly overhead and 72 provided overhead costs for specific items. The distributions of total overhead were very similar across these two subsets, so these groups are collapsed when possible. 59% of respondents indicated their practice only had a single full-time attorney, by far the most common response type. Only 10% of respondents indicated any part-time attorneys as members of their practice.

Finally, **50 different Indiana counties were represented in the sample.**

#### SURVEY SAMPLE:



148 Respondents

204 Attorneys  
Represented

108 Responses met  
eligibility for inclusion  
in study

50 Indiana Counties  
represented

#### Information Analyzed:



Of the 108 Responses:

36 provided yearly  
overhead costs

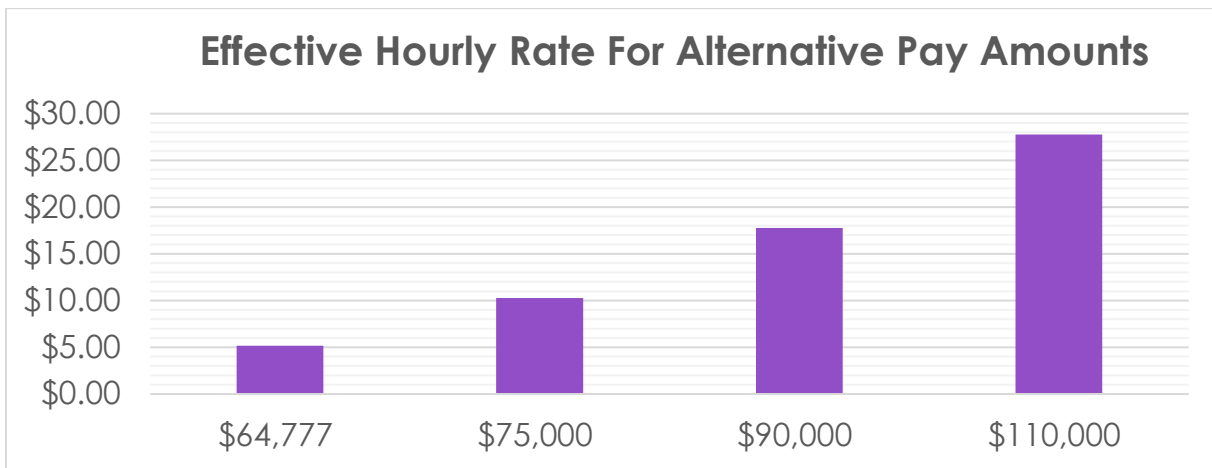
72 provided itemized  
overhead costs



## IV. Results

The primary purpose of the overhead survey was to determine the typical overhead cost required to support a single full-time attorney. To do so, the total overhead amount provided in each response was converted to a single FTE (full-time equivalent) overhead amount based on the total FTE reported by the respondent. The distribution of this overhead-per-attorney measure consisted of a large group of roughly similar amounts, with a smaller group covering a range of especially high overhead amounts. This is a common distribution when dealing with income and costs, often called “positively skewed” or “long-tailed” in the positive direction. Our results are summarized by using a median instead of a mean, so the data is not influenced by a small number of high-overhead attorneys.

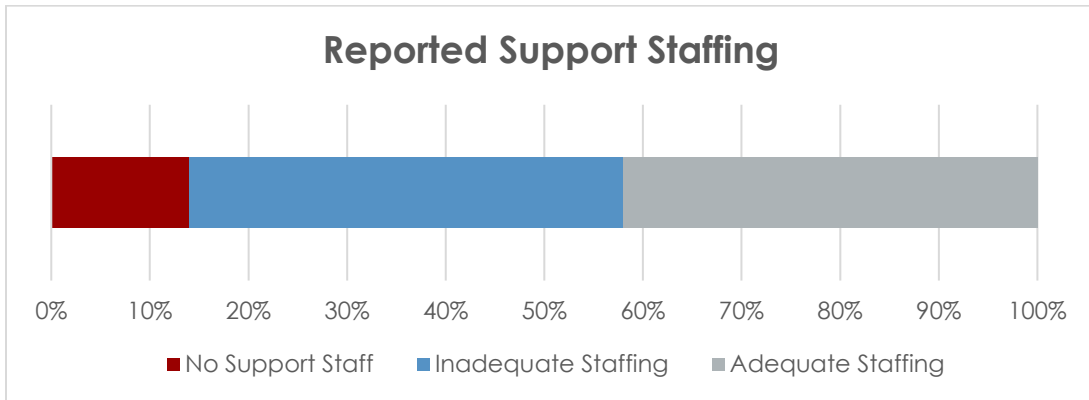
**The median overhead-per-attorney in this sample was \$54,455.** Under current Commission standards, the minimum pay for a full-time attorney when there is no comparable prosecutor position in that county is \$60,350. In 2018 the median pay for full-time contract attorneys in Commission counties was slightly higher, at \$64,777. After accounting for the median overhead amount, this median compensation leaves only \$10,322 in yearly compensation for the attorney, or about \$5.16 per hour, based on a 40-hour work week. The graph below summarizes the effective hourly rate at various levels of yearly compensation.



In Indiana, the 2018 median pay for full-time contract attorneys in commission counties was \$64,777. After accounting for overhead, this is equivalent to an effective hourly rate of \$5.16. This graph shows effective hourly rates after accounting for overhead using multiple benchmarks compensation value.



#### IV. Results (cont.)



Despite support staff being the highest reported cost, not every response showed adequate staffing (as defined by commission standards) and a significant portion reported no support staff at all. This graph shows the breakdown of these three categories in the received responses.

Among the subgroup that itemized costs, the greatest cost by far was non-attorney compensation, with a median of amount of \$22,650. **It should be noted that 14% of our sample reported no support staff at all, which creates a serious concern.**

Moreover, 44% of our respondents reported less than the current Commission standard for adequate staffing, which is 0.75 FTE of support staff for every 1.0 FTE attorney. See the above chart for a graphical representation of the distribution of support staff in this sample. Finally, some respondents indicated they would hire support staff but are not financially able to do so, suggesting that the current median overhead of \$54,455 is lower than it ought to be.



## V. Previous Surveys

The previous surveys in Michigan<sup>1</sup> and North Carolina<sup>2</sup> had different scopes and different issues specific to the respective states. However, it is still useful to compare the median overhead reported here to the amount reported in these previous survey reports. Figure 4 summarizes this comparison graphically.

**North Carolina reports a median yearly amount of \$39,096.** This amount is lower than the \$54,455 reported in our survey, but North Carolina found that many attorneys were going without “non-optional” components of overhead costs due to the extremely low compensation of the attorneys in their sample. For example, 84% of the respondents in the North Carolina survey did not have any support staff, versus 14% in our sample. **When the authors of the North Carolina report summed the median reported overhead for all non-optional components, the median total overhead was \$68,760.**

Conversely, the **Michigan survey reports an overhead amount far above the amount currently reported here, at about \$99,000 per year.** The overhead amount is reported as a mean (not median) hourly amount in the Michigan report, so it is not directly comparable to the number reported here. However, it still suggests that typical attorney overhead costs in Michigan are higher than in Indiana.

The exact overhead amounts are different across these three contexts, with the possibility that Indiana overhead amounts are lower than they potentially should be. Regardless of the exact amount, it is very clear that overhead costs are significant across all three states, and the current contractor compensation in Indiana does not sufficiently account for contractor overhead cost.

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<sup>1</sup> Sadler, C. and Siegel, J. (2018). *Incentivizing Quality Indigent Defense Representation*. Lansing, MI: Michigan Indigent Defense Commission.

<sup>2</sup> Gressens, M. A. (2019). *FY19 Private Appointed Counsel (PAC) Effective Pay Rate Study Public Defense Attorney Overhead Rates and Access to Benefits*. Durham, NC: North Carolina Office of Indigent Defense Services.





## VI. Summary & Conclusions

In order to maintain true pay parity with county prosecutors, contractual public defense counsel must be compensated in a way that addresses the difference in overhead responsibilities.

Our survey matches previous surveys in other states showing a significant median overhead, \$54,455 in the case of our survey, which almost completely eclipses the defender's compensation. **This amount means that a typically-paid (\$64,777 for full-time) contractor in Indiana is making just over \$5 per hour, based on a 40-hour work week.**

**Overhead compensation, or an increase in general compensation, or both, are required to provide appropriate pay to contractors, and to maintain true pay parity with the county prosecutors.**

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## Acknowledgements:

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The Indiana Chief Public Defender Association

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**Mark W. Rutherford, J.D., Commission Chair**