

DRAFT

INDIANA PUBLIC DEFENDER COMMISSION

September 20, 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 (in person)
Ms. Samantha DeWester (in person)
Hon. Mary Ellen Diekhoff (in person)
Hon. Kelsey B. Hanlon (in person)
Mr. David J. Hensel (remote)
Sen. Eric Koch (in person)

Members absent:

Rep. Ragen Hatcher
Rep. Ryan Lauer
Hon. Steven P. Meyer
Sen. Gregory G. Taylor

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)
Tristan Snell (in person)

Audience members:

Jim Abbs, Noble County Chief Public
Defender and President, Chiefs
Association (remote)
Ray Casanova, Marion County Public
Defender Agency (in person)
Amy Karozos, State Public Defender
(remote)
Lucy Lynch, Legislative Assistant to
Sen. Koch (in person)
Sabra Northam, Hallowell Consultants
(remote)
Andrew Vandebosch, Howard
County Chief Public Defender
(remote)

At 2:03 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 June 14, 2023, Meeting

There were no changes to the minutes. The minutes were approved unanimously.

2. Approval of Amended Marion County Comprehensive Plan (Complete Revision)

The Chair noted that the Marion County Public Defender Agency (“MCPDA”) has done a lot of work on their revised plan, which had not been revised since 1993. Mr. Mason noted that the entire plan is rewritten. He appreciated all the county’s hard work.

Mr. Mason first noted that the plan does implement the Commission’s new, optional Standard O. Then he directed the Commission's attention to a few specific provisions of the proposed amended plan. First, Section B.f. included making the agency independent from other county agencies and clarifies the chief public defender is the chief executive of the agency and in charge of their own human resources. MCPDA requested the provision because they wanted to put the office on equal footing with the prosecutor’s office. Mr. Mason noted that the provision does not contradict the Commission’s standards but merely went beyond them. Ray Casanova stated that it was critical to maintain pay parity with the prosecutor’s office. He noted that it can be difficult to persuade HR to approve pay raises and job descriptions. He stated that it would never be the County’s intention to come first to the Commission. Instead, the County was working to change the county ordinance to permit independence from HR.

Judge Hanlon asked what the MCPDA board members thought of the proposal, and in particular those appointed by the county executive. Mr. Casanova responded that it was approved unanimously without comment. He knew that Marion County Chief Public Defender Bob Hill met with each member of the county board individually to discuss the changes, but Mr. Casanova did not know the substance of those meetings.

Ms. DeWester moved to approve the language of Section B.f. Judge Hanlon seconded the motion. The motion carried unanimously.

Next, Mr. Mason explained that Section H summarized the Commission standard regarding Standard G. He proposed that an additional sentence be added as Section H.c., which would clarify that part-time public defenders would “comply with the minimum salary requirements set by the Indiana Public Defender Commission for part-time positions without an equivalent position in the prosecutor’s office.” MCPDA agreed to this change.

Ms. DeWester moved to approve the amended language of Section H. Judge Diekhoff seconded the motion. The motion carried unanimously.

Finally, Mr. Mason called attention to Section N. When Mr. Mason expressed concerns to the MCPDA about their original draft of Section N, the county revised it, but subsequently decided they wanted to go back to their original version. Mr. Mason provided the Commission with both the original and the revised language, as well as the Commission’s Standard N (upon which Section N was based) and typical language from other comprehensive plans. At issue was the source of funding for expenses for experts and depositions for individuals retaining private counsel, and he recommended that the Commission go back to the intent of Standard N and follow the revised version. Mr. Mason observed that the Commission could approve MCPDA’s original draft or approve the plan and send this section back to the county for further revision.

Mr. Casanova responded that the MCPDA believe it was the duty of the courts, not the county public defender, to pay for such expenses, and that it is very difficult for the county public defender to budget for this type of expenses. He noted that these expenses tend to be very large and that such requests threaten funding for the public defender’s attorneys. He also argued there is significant room for abuse of the system. Finally, he said the county’s language allowed the courts to fund the expenses.

Ms. Corley asked if the MCPDA is reimbursed for expenses in this category. Mr. Casanova answered that it is not automatic. She also asked how the need is demonstrated, and Mr. Casanova described the process of review and how experts are

consulted and reduced fees are requested. Mr. Casanova clarified that where investigators are requested, they must be selected from the MCPDA investigators.

Ms. DeWester asked what would happen if a judge ordered the MCPDA to pay such fees despite what the comprehensive plan provided. Mr. Mason responded that that was why Standard N contains the provisions it does – it allows the Commission to withhold reimbursement if the system were routinely abused. Mr. Mason added that he has testified on this matter regarding who determines indigency and that the language of Standard N is crucial. He also recommended that language limiting experts and investigators to in-house not be included.

Mr. Abbs noted that this issue arises not only in Marion County but also in smaller counties.

Ms. DeWester commented that she understood that indigent individuals should not be allowed to demand the highest-paid experts or investigators but should use the same type of experts as the public defender's office.

Judge Hanlon inquired when this type of situation arises. Judge Diekhoff explained that it arises when private counsel wants to hire an expert, but the client can't afford the expert. She stated she does not often approve this type of expense.

There was a general discussion about the instances in which this type of situation arises. Mr. Mason read from the commentary to Standard N, noting that it is a cost-saving measure for counties when an individual may afford a private counsel but cannot afford expert or investigative services. One option would be for private counsel to withdraw so the court could appoint both a public defender and the needed additional services. Standard N allows for a court to approve just the additional services while maintaining private counsel. This provision mirrors similar federal procedures.

Ms. DeWester moved to adopt Section N in its original form. Judge Diekhoff asked who would fund it, because in her experience, the courts do not have the funds to pay for such expenses. She was concerned that requests for experts would be denied because there would not be funding in court budgets for them. Ms. DeWester responded it would have to come from the county's budget. Ms. DeWester suggested

that the General Assembly should address it. Mr. Casanova said that courts can replenish its budget for circumstances such as this. Judge Diekhoff said that even if that were true, it would not happen in her county or in many other counties. Judge Hanlon wondered whether the supplemental fund could be tapped. Mr. Mason responded that it could be, but only if the county had already provided enough funding generally for the year.

Mr. Mason recommended that Section N be tabled until sources of funding could be resolved and that everything else be approved. Ms. DeWester withdrew her motion. Judge Hanlon moved to approve the comprehensive plan except for Section N to allow for additional research and drafting for that Section, which would be discussed at the December meeting. Sen. Koch seconded the motion. The motion carried unanimously.

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

Mr. Mason first updated the Commission regarding the At-Risk Youth and Family fund. The Marion County juvenile program was very successful, so to help the program be implemented, it was being renewed for another year at 50% funding for 2024. Monroe and Vigo counties were System Navigator pilots, and those pilots are being extended for another year to allow data from those programs to be collected. The initial data from those counties is very promising.

He also reminded the Commission that Commission staff will be moving in December or January. The internal budget may need to be adjusted to pay for internet, which the Commission has not had to pay for previously.

Mr. Mason stated that there were more than sufficient funds to make the necessary reimbursements.

4. Status of County Compliance:

- a. Howard, Vanderburgh, and Steuben Follow-Ups & Monroe County*

Howard County

Mr. Mason reported that he had anticipated discussing an extension for another year to reach pay parity, but the Howard County public defender officer just informed the Commission that the County Council decided to fully fund the public defender salaries for 2024.

Vanderburgh County

Steven Owens, the Chief Public Defender for Vanderburgh County, informed Commission staff that the county would not finalize budgets until September 29, 2023, and neither he nor Commission staff have heard anything from the county. After the dire news at the June meeting, where the Commission was informed many defendants had not been appointed counsel due to counsel reaching maximum caseloads, Commission staff sent a letter advising Vanderburgh County to reject instead of accepting cases. The chief public defender has been complying with that approach. In addition, the State Public Defender has been providing hourly counsel appointments to the county, which has enabled compliance.

Steuben County

Commission staff sent a 90-day letter to Steuben County regarding caseload noncompliance, and the county has approved the immediate hiring of two additional, part-time public defender positions. Mr. Mason noted that these hires would not immediately resolve the compliance issue, but that this should be sufficient to ultimately achieve compliance.

Monroe County

Mr. Mason stated that he has spoken to Judge Diekhoff and Monroe County, which has been assigning cases to unqualified attorneys and to an attorney who has not submitted qualifications to the Commission. All these issues were being addressed, in part by providing an updated attorney list to the judges.

b. Individual and Multi-County Compliance Updates

Mr. Mason reported that a few counties have compliance issues, but solutions have been addressed. Many of the multi-county issues are due to lack of coordination between counties. He did not recommend any Commission action.

5. Requests for Reimbursement

a. 50% Reimbursement in Death Penalty Cases

Mr. Mason stated there were \$133,983.90 in death penalty requests for which he would be seeking reimbursement (see table below). Clinton County has reached a deal removing the death penalty in the Ferrell case, so that case will be winding down. Another county is starting a death penalty case, but private counsel has been retained there and the Commission may not see requests for reimbursement. Wayne County is just starting. Marion County's is unusual in that because the case is old and the hourly rates are relatively low. Requests were adjusted due to typographical errors and hour rate errors. He recommended reimbursement for all requests, as adjusted.

INDIANA PUBLIC DEFENDER COMMISSION

Reimbursement Requests in Capital Cases

September 20, 2023

COUNTY	DEFENDANT	TOTAL
Clinton	Ferrell	\$60,849.90
Madison	Boards	\$19,410.60
Marion	Adams	\$221.50
Wayne	Lee	\$53,501.90
TOTAL		\$133,983.90

It was moved and seconded to approve the requests. The motion carried unanimously.

b. 40% Reimbursement in Non-Capital Cases

Mr. Mason reported a few adjustments to the non-capital reimbursement requests due to adjustments in several counties. The total reimbursement request for

the second quarter of 2023 was \$ 8,661,636.71 (see table in Appendix 1). There were no objections. The reimbursements were approved.

6. Local Public Defender Board Appointments

Mr. Cullen reported that Commission staff were recommending the reappointment in Decatur County of William Smith, who has been an excellent board member, and a new candidate in Pulaski County, Anne Scott, a social worker highly recommended by the judges. Judge Hanlon moved to approve the two appointments. Sen. Koch seconded the motion. The motion carried unanimously.

7. Legislative & Policy Updates

Mr. Cullen congratulated Mr. Hensel for receiving the Leadership in Law award from the Indiana Lawyer. Mr. Cullen noted that the attorney shortage article is gaining traction and receiving additional attention.

Regarding the 2024 legislative agenda, Mr. Cullen noted that he and Sabra Northam understand what happened in 2023; they now need to decide what to do about it going forward. They are working with legislators to propose a limited-scope misdemeanor reimbursement pilot program using existing funds. That bill would also be used as a vehicle to change the Commission's name. If approved, staff will design a program for presentation to the Commission for final approval at the December meeting. Sen. Koch noted that measurable outcomes are the key.

Judge Diekhoff moved to adopt this legislative agenda. Ms. DeWester seconded the motion. The motion passed unanimously.

8. National Workload Standards, LWOP & Criminal Rule 24 (Death Penalty Standard) Updates

Mr. Mason stated that this agenda item was largely designed to help prepare the Commission for anticipated discussion at the December 2023 meeting. He provided a brief background on the National Workload Standards, which were just released.

Mr. Mason reminded the Commission that one of the Commission's duties is to recommend standards for public representation in death penalty cases. The Public Defender Council Board has identified a concern about the lack of death penalty qualified attorneys in Indiana, and it created an ad hoc death penalty committee to consider the issue. One item of low-hanging fruit that Commission staff was prepared to recommend to the Commission concerned the standard death penalty hourly rate. Criminal Rule 24 provides that new hourly rates are only effective on newly filed or remanded cases. He noted that the Commission is reimbursing Marion County for death penalty work performed in a current case at a rate of \$70/hour – the rate in effect in 2001. He recommended that the Commission approve allowing the death penalty rate to adjust during the life of the case. It was moved and seconded to adopt that recommendation. The motion carried unanimously.

Mr. Mason noted there are ambiguities in C.R. 24 as well. For example, an issue arose in Marion County where the county sought to certify an attorney whose experience on a long-running current case was equated to “prior experience.” Mr. Mason recommended that that experience qualify the attorney. There were no objections to finding significant experience on a current case acceptable to allow an attorney to become certified to accept death penalty cases.

Finally, Mr. Mason observed that the Commission does not have a qualification standard for Life Without Parole (LWOP) representation. He noted that the Commission has received a request that it recommend to the Supreme Court that it require the same qualifications to represent a person in an LWOP as in a death penalty case. Judge Diekhoff opined that there should be a court rule regarding LWOP qualifications because she believes the state will be seeing a rise in LWOP cases instead of death penalty cases. She said the Commission should draft and use a rule as a backup, but the court rule should be priority. In response to a question from Ms. Corley, Mr. Mason stated that the Commission could create a weighting standard, providing how much an LWOP case is worth for caseload compliance issues, but the Commission should not have a standard for LWOP qualifications; that is the role of the Supreme Court, which has established the standard for death penalty

qualifications. Mr. Abbs commented that he believed it should be a court rule. Mr. Mason stated that this issue would be discussed further at the December meeting.

9. Other Matters

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

Appendix 1

INDIANA PUBLIC DEFENDER COMMISSION

Second Quarter 2023 Requests for Reimbursement in Non-Capital Cases 9/20/23

County	Total	Non-Reimb.	% Adjust	Eligible	40%	Prior	Total
	Expenditure	Adjustment		Expenditure	Reimbursed	Quarter	Payment
						Adj.	
Adams	\$122,941.60	\$20,923.41	17.02%	\$102,018.19	\$40,807.27		\$40,807.27
Allen	\$1,358,268.34	\$90,295.17	6.65%	\$1,267,973.17	\$507,189.27		\$507,189.27
Benton	\$35,285.40	\$4,034.76	11.43%	\$31,250.64	\$12,500.26		\$12,500.26
Blackford	\$54,352.00	\$5,436.79	10.00%	\$48,915.21	\$19,566.09		\$19,566.09
Brown	\$86,258.32	\$24,933.49	28.91%	\$61,324.83	\$24,529.93		\$24,529.93
Carroll	\$86,440.80	\$16,835.47	19.48%	\$69,605.33	\$27,842.13		\$27,842.13
Cass	\$187,928.98	\$29,679.81	15.79%	\$158,249.17	\$63,299.67	-\$8,403.00	\$54,896.67
Clark	\$488,105.76	\$30,411.59	6.23%	\$457,694.17	\$183,077.67		\$183,077.67
Clinton	\$110,691.27	\$20,834.34	18.82%	\$89,856.93	\$35,942.77		\$35,942.77
Crawford	\$39,568.36	\$10,468.05	26.46%	\$29,100.31	\$11,640.12		\$11,640.12
Decatur	\$118,607.84	\$21,778.26	18.36%	\$96,829.58	\$38,731.83		\$38,731.83
DeKalb	\$255,319.79	\$23,231.80	9.10%	\$232,087.99	\$92,835.20		\$92,835.20
Delaware	\$422,937.20	\$6,222.78	1.47%	\$416,714.41	\$166,685.76		\$166,685.76
Elkhart	\$947,728.14	\$162,219.37	17.12%	\$785,508.77	\$314,203.51		\$314,203.51
Fayette	\$114,361.11	\$15,525.15	13.58%	\$98,835.96	\$39,534.39		\$39,534.39
Floyd	\$304,328.77	\$42,328.76	13.91%	\$262,000.01	\$104,800.01		\$104,800.01
Fulton	\$90,873.95	\$35,872.51	39.48%	\$55,001.44	\$22,000.57		\$22,000.57
Gibson	\$199,798.98	\$38,667.69	19.35%	\$161,131.29	\$64,452.51		\$64,452.51
Grant	\$285,683.38	\$5,836.36	2.04%	\$279,847.02	\$111,938.81		\$111,938.81
Greene	\$189,729.35	\$35,504.68	18.71%	\$154,224.67	\$61,689.87		\$61,689.87
Hancock	\$255,768.38	\$16,341.24	6.39%	\$239,427.14	\$95,770.86		\$95,770.86
Harrison	\$191,178.53	\$19,880.66	10.40%	\$171,297.87	\$68,519.15		\$68,519.15
Hendricks	\$528,515.27	\$77,556.76	14.67%	\$450,958.51	\$180,383.41		\$180,383.41
Howard	\$567,307.13	\$47,338.58	8.34%	\$519,968.55	\$207,987.42		\$207,987.42
Jackson	\$275,682.05	\$12,434.13	4.51%	\$263,247.92	\$105,299.17		\$105,299.17
Jasper	\$118,317.00	\$34,983.08	29.57%	\$83,333.92	\$33,333.57		\$33,333.57
Jay	\$159,057.44	\$21,986.88	13.82%	\$137,070.56	\$54,828.22		\$54,828.22
Jefferson	\$245,839.19	\$56,763.69	23.09%	\$189,075.50	\$75,630.20		\$75,630.20
Jennings	\$120,410.72	\$9,115.62	7.57%	\$111,295.10	\$44,518.04		\$44,518.04
Knox	\$254,209.95	\$38,744.77	15.24%	\$215,465.18	\$86,186.07		\$86,186.07
Kosciusko	\$249,345.79	\$79,808.75	32.01%	\$169,537.04	\$67,814.81		\$67,814.81
LaGrange	\$114,792.14	\$22,186.82	19.33%	\$92,605.32	\$37,042.13		\$37,042.13
Lake	\$1,507,885.93	\$8,762.92	0.58%	\$1,499,123.01	\$599,649.20	-\$109.43	\$599,539.77
LaPorte	\$283,424.62	\$29,801.44	10.51%	\$253,623.18	\$101,449.27		\$101,449.27
Lawrence	\$268,989.81	\$32,983.29	12.26%	\$236,006.52	\$94,402.61		\$94,402.61
Madison	\$556,878.34	\$34,747.87	6.24%	\$522,130.47	\$208,852.19		\$208,852.19
Marion	\$6,320,567.20	\$635,248.70	10.05%	\$5,685,318.50	\$2,274,127.40		\$2,274,127.40

Martin	\$100,018.98	\$13,161.70	13.16%	\$86,857.28	\$34,742.91		\$34,742.91
Miami	\$175,098.10	\$23,076.80	13.18%	\$152,021.30	\$60,808.52		\$60,808.52
Monroe	\$687,499.37	\$134,253.89	19.53%	\$553,245.48	\$221,298.19		\$221,298.19
Noble	\$331,082.15	\$50,751.76	15.33%	\$280,330.39	\$112,132.16	-\$14.40	\$112,117.76
Ohio	\$23,271.29	\$5,940.20	25.53%	\$17,331.09	\$6,932.44		\$6,932.44
Orange	\$124,343.37	\$17,995.72	14.47%	\$106,347.65	\$42,539.06		\$42,539.06
Owen	\$77,765.11	\$13,153.96	16.91%	\$64,611.15	\$25,844.46		\$25,844.46
Perry	\$73,750.31	\$10,371.26	14.06%	\$63,379.05	\$25,351.62		\$25,351.62
Pike	\$51,856.77	\$1,604.90	3.09%	\$50,251.87	\$20,100.75		\$20,100.75
Pulaski	\$107,014.05	\$15,787.32	14.75%	\$91,226.73	\$36,490.69		\$36,490.69
Ripley	\$63,749.78	\$9,683.21	15.19%	\$54,066.57	\$21,626.63		\$21,626.63
Rush	\$107,545.52	\$18,433.49	17.14%	\$89,112.03	\$35,644.81		\$35,644.81
Scott	\$160,415.02	\$19,604.79	12.22%	\$140,810.23	\$56,324.09		\$56,324.09
Shelby	\$168,811.65	\$29,670.80	17.58%	\$139,140.85	\$55,656.34		\$55,656.34
Spencer	\$133,702.72	\$31,277.32	23.39%	\$102,425.40	\$40,970.16		\$40,970.16
Steuben	\$140,038.30	\$44,109.07	31.50%	\$95,929.23	\$38,371.69		\$38,371.69
StJoseph	\$792,029.11	\$85,615.37	10.81%	\$706,413.74	\$282,565.49		\$282,565.49
Sullivan	\$111,920.57	\$22,543.84	20.14%	\$89,376.73	\$35,750.69		\$35,750.69
Switzerland	\$31,610.57	\$6,540.00	20.69%	\$25,070.57	\$10,028.23		\$10,028.23
Tippecanoe	\$1,059,085.05	\$143,800.05	13.58%	\$915,285.00	\$366,114.00		\$366,114.00
Union	\$16,230.95	\$2,354.20	14.50%	\$13,876.75	\$5,550.70		\$5,550.70
Vanderburgh	\$908,361.77	\$56,759.95	6.25%	\$851,601.82	\$340,640.73		\$340,640.73
Vigo	\$858,777.24	\$133,114.94	15.50%	\$725,662.30	\$290,264.92		\$290,264.92
Wabash	\$131,360.04	\$23,507.04	17.90%	\$107,853.00	\$43,141.20		\$43,141.20
Warren	\$18,015.04	\$6,759.92	37.52%	\$11,255.12	\$4,502.05		\$4,502.05
Warrick	\$189,540.67	\$32,467.60	17.13%	\$157,073.07	\$62,829.23		\$62,829.23
Washington	\$165,260.82	\$21,817.14	13.20%	\$143,443.68	\$57,377.47		\$57,377.47
WCIPDO	\$171,028.11	\$27,270.74	15.95%	\$143,757.37	\$57,502.95		\$57,502.95
TOTAL	\$24,496,561.26	\$2,821,152.42	\$10.09	\$21,675,408.83	\$8,670,163.54	-\$8,526.83	\$8,661,636.71