

PUBLIC DEFENDER COMMISSION NEWS

August 2010

Volume 3, Number 2

2010 COMMISSION MEETING DATES.

September 22, 2010 2:00 p.m. 5TH Floor, Room 500 30 South Meridian St. Indianapolis, Indiana	December 15, 2010 2:00 p.m. 8 th Floor, Room 804 30 South Meridian St. Indianapolis, Indiana
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QUARTERLY MEETING HIGHLIGHTS

At the June 23, 2010, meeting of the Indiana Public Defender Commission, the members approved reimbursement claims for death penalty defense costs of \$157,154.52, and reimbursement claims for non-capital indigent defense costs of \$3,748,211.96. LaGrange County's comprehensive plan was approved, making it the newest member of the program. In addition, five new counties are interested in the Public Defender Fund reimbursement program.

COLLATERAL COSTS: THE HIDDEN IMPACT OF ADULT CONVICTIONS AND JUVENILE ADJUDICATIONS

Long after sentences have been imposed and served, the collateral consequences of those punishments still impact the juveniles and adults who served them, along with their families. Collateral consequences arise even if no time has been spent in a juvenile or adult prison system and regardless of whether the sentence was the result of a trial or plea agreement. Despite the long-term and significant impact of collateral consequences, most courts have held that counsel are not required to advise defendants of any possible collateral consequences.

The recent United States Supreme Court decision of *Padilla v. Kentucky* addressed



Commission Members:

Mark W. Rutherford,
Chairman, Indianapolis,
serving since May 2007

Susan Carpenter,
Indianapolis, serving
since October 1989

Betty Lou Jerrel,
Evansville, serving since
November 1993

Sen. Timothy Lanane,
Anderson, serving since
October 1998

David J. Hensel,
Indianapolis, serving
since May 2007

Peter D. Nugent,
Indianapolis, serving
since May 2007

**Hon. Judge Diane Ross
Boswell,** Crown Point,
serving since April 2008

Rep. Vernon Smith,
Gary, serving since
November 2008

Rep. Greg Steuerwald,
Danville, serving since
November 2008

deportation as a collateral consequence of Padilla's pleading guilty to drug distribution charges. In an unusual decision, the Supreme Court held that in order to provided competent representation, Padilla's counsel should have informed him of the likely risk of deportation associated with his guilty plea.¹ While the Supreme Court's holding is limited only to the collateral consequence of deportation and only to those instances where deportation consequences are easily determined, the *Padilla* decision has the potential for a broader influence on advice related to collateral consequences.²

Not every collateral cost is a consequence of every conviction, adjudication, or plea. Some collateral consequences may be mitigated by petitioning the court or government agency responsible for imposing or enforcing the collateral cost. However, collateral consequences are seemingly unending. A lengthy, but by no means exhaustive, list of consequences applicable to both adults and juveniles follows:

- Deportation;
- Denial of/termination from employment;
- Denial/revocation of professional licenses;
- Ineligible for student loans;
- Expulsion from school;
- Loss of public housing (extends to family members);
- Loss of access to food assistance (extends to family members);
- Enhanced sentences for future charges;
- Ineligible for sentence reduction;
- Ineligible for service on a federal jury;
- Ineligible to hold certain federal and state offices (permanent or temporary ban);
- Ineligible to participate in Civilian Marksmanship Program activities;
- Ineligible for military enlistment (felony convictions only);
- Ineligible to serves as a CASA volunteer (sex crimes, domestic violence crimes);
- Prohibition from working for a bank for ten years (unless court approval granted to the FDIC institution);
- Barred from serving as a foster parent and/or adopting a child (limited to certain offenses);
- Ineligible for SSDI based upon impairment received/exacerbated in connection with the commission of a felony;
- Barred from serving as an SSDI representative payee for an SSDI beneficiary (felony convictions);
- Federal lifetime ban from TANF benefits for drug offense (states can opt out);
- Prohibition from possessing firearms and ammunition;
- Prohibition from owning body armor;

¹ Of interest, in 1994 the Indiana Court of Appeals found as a matter of first impression that "the consequence of deportation, whether labelled [sic] collateral or not, is of sufficient seriousness that it constitutes ineffective assistance for an attorney to fail to advise a noncitizen defendant of the deportation consequences of a guilty plea." *Williams v. State*, 641 N.E.2d 44, 49 (Ind. Ct. App. 1994).

² It should be noted that while Padilla's counsel's failure to advise him of the deportation risk was ineffective assistance, Padilla was still required to demonstrate that he suffered prejudice therefrom.

**Sen. Brent Steele,
Bedford, serving since
March 2009**

**Hon. Mary Ellen Diekhoff,
Bloomington, serving
since May 2010**

Contact Us:

**Public Defender
Commission**

**30 South Meridian Street,
Suite 500**

**Indianapolis, Indiana
46204-3568**

Phone (317) 232-2542

Fax (317) 233-6586

Deborah A. Neal,

Staff Counsel

dneal@courts.state.in.us

Michele Lofthouse,

Staff Counsel

mlofthou@courts.state.in.us

- Involuntary civil commitment to a secure facility if deemed to be a “sexually violent predator” (applies to both adults and juveniles);
- Psychological effects and damaged familial relationships;
- Loss of driver’s license;
- Registration on the sex offender registry (for certain offenses);
- Inclusion in police databases;
- Exclusion from Peace Corps and other volunteer programs;
- Unable to work as a teacher, police officer, day care worker, or summer camp employee; and
- Negative impact to credit rating.

The following list includes additional collateral consequences that are mainly applicable to juveniles:

- Juvenile adjudications used as aggravators for adult sentencing;
- Juvenile adjudications can serve as predicate offenses for up-charges in adult court;
- Limitations on athletic opportunities at college;
- Impacts employment eligibility if an employer can look at delinquency history;
- Juvenile adjudication/plea information is shared with schools, thus prejudicing the school experience;
- Juvenile adjudications can result in non-suspendable time as an adult;
- “Criminal character” is used as a sentencing consideration in juvenile court;
- Juvenile adjudications can be used as “bad character” evidence;
- Loss of academic and athletic scholarships/21st Century Scholars; and
- Ineligible to go into Job Corps.

These collateral costs, while significant enough standing alone, have the cumulative effect of creating barriers to successful reentry into society. These consequences result in inability to obtain steady employment, find housing, and further education. Juveniles and adults alike may find themselves unable to return home because to do so would result in the loss of public assistance for the entire family. Even if the juvenile or adult was not the one receiving the benefits, mere residency in a home where one individual receives public assistance is enough for benefits for the entire household to terminate. Convictions, adjudications or pleas related to certain offences result in ineligibility for student loans, making it difficult, if not impossible, for individuals exiting a prison system to further their education and better themselves. It becomes incredibly difficult to create opportunities that lead away from situations that resulted in involvement in the legal system in the first place.

Because of the expansive nature of collateral costs, there is no best solution to how they should be addressed. Currently, collateral costs have the effect of causing the cycle with the legal system to repeat. A more open dialog between the courts, counsel, and defendants regarding potential collateral consequences would result in more informed decisions related to plea agreements and trials. With increased knowledge, adults and juveniles would be more likely to accept plea agreements that eliminated certain collateral consequences. This results in a smoother transition back to society, and helps to address jail overcrowding and court

- **LINKS TO FORMS AND GUIDELINES:**

Locate Reimbursement Forms [here](#)

Locate Guidelines For Capital Case Reimbursements [here](#)

Locate Guidelines and Standards for Non-capital Case Reimbursements [here](#) and [here](#)

congestion because the likelihood of repeat offenses is diminished.

Unfortunately, the current state of the law creates a great dilemma for defense counsel. If counsel remains silent as to collateral costs, the likelihood of success of an ineffective assistance or due process claim is virtually nonexistent. However, if counsel chooses to discuss collateral costs and gives wrong advice, partial advice, or does not discuss all of the potential consequences, claims for due process and Sixth Amendment violations are more meritorious. Completely eliminating collateral costs is impossible. However, in order to minimize collateral consequences, initiating discussion about the current quandary defense counsel faces is necessarily the first step to doing so.

IMPORTANT DEADLINES.

To be timely filed, non-capital requests for reimbursement are due in the office of staff counsel on the following dates:

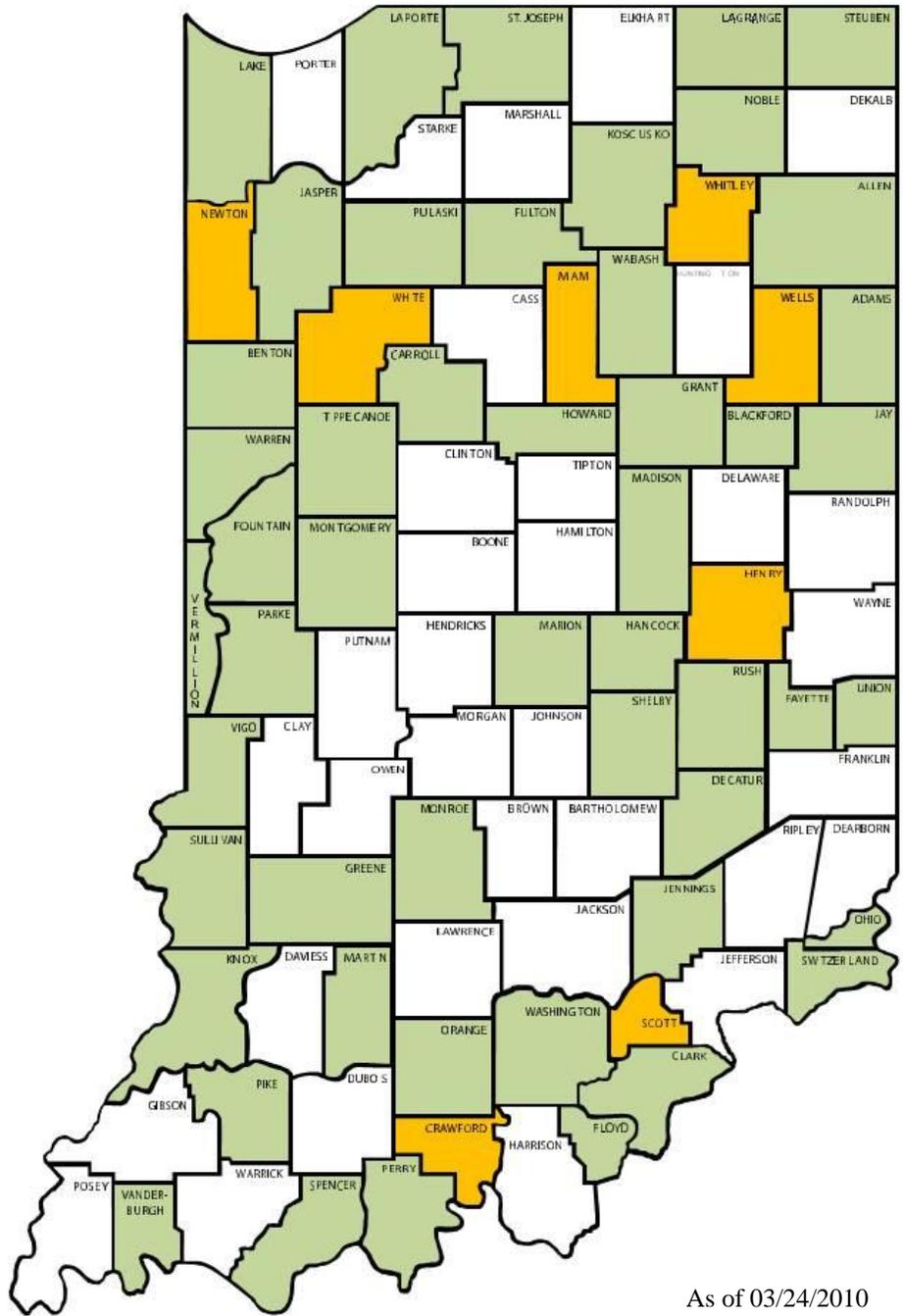
3 rd Quarter 2010 Due November 15, 2010	4 th Quarter 2010 Due February 14, 2011
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The filing deadline for reimbursement requests in capital cases is 120 days from the date the county auditor pays the underlying expense.

IS YOUR COUNTY IN THE PUBLIC DEFENDER COMMISSION PROGRAM?

COUNTIES RECEIVING REIMBURSEMENTS

Adams	Monroe
Allen	Montgomery
Benton	Noble
Carroll	Ohio
Clark	Orange
Decatur	Parke
Fayette	Perry
Floyd	Pike
Fountain	Pulaski
Fulton	Rush
Grant	Saint Joseph
Greene	Shelby
Hancock	Spencer
Howard	Steuben
Jasper	Sullivan
Jay	Switzerland
Jennings	Tippecanoe
Knox	Union
Kosciusko	Vanderburgh
LaGrange	Vermillion
Lake	Vigo
LaPorte	Wabash
Marion	Warren
Martin	Washington



- Counties in Public Defender Program
- Counties in Public Defender Program not currently receiving reimbursements
- Counties not in Public Defender Program

A MESSAGE FROM THE STAFF:

We hope that you find this edition of our newsletter informative. If you do not wish to receive the newsletter, please send an email to staff counsel Deborah Neal at dneal@courts.state.in.us