

## COMMISSION GUIDELINES RELATED TO NON-CAPITAL CASES

### Standard A County Public Defender Boards

- 09/01/94 The creation of a local public defender board is not required in counties with populations fewer than 12,000.
- 05/12/99 A small claims court magistrate is a court employee; therefore, under I.C. 33-40-7-3, a magistrate is not eligible to be appointed to a local public defender board.
- 06/14/17 Consistent with I.C. 33-40-7-3, senior judges are not eligible to be appointed to a local public defender board.
- 03/20/19 Local public defender board members serve three year terms and may only be removed by the appointing authority for just cause.

### Standard B Comprehensive Plan

- 12/02/94 For non-capital cases, the Commission may determine that a county is eligible for reimbursement as of the date of approval of the plan by the Commission or eligible for reimbursement retroactively from the date the approved plan was implemented. The Commission will consider the circumstances in each situation when making its decision.
- 12/02/94 The Commission may authorize reimbursement to counties that have complied with part, but not all, of a comprehensive plan, if the counties submit a proposal for a master plan of full compliance. Claims from counties in partial compliance will be considered on an *ad hoc* basis.
- 09/04/02 **A.** For purposes of authorizing reimbursement pursuant to I.C. 33-40- 6-5, “compliance with the guidelines and standards set by the commission” shall be considered by the Commission to include counties that have submitted a comprehensive plan approved by the Commission and that are, at the time of the requested reimbursement, substantially in compliance with:
1. all Commission guidelines and standards, or,
  2. The terms of a phase-in plan and all Commission guidelines and standards applicable to the terms of the phase-in plan.

Counties that qualify for reimbursement pursuant to subsection (2) above

shall only be eligible for reimbursement of those indigent defense services provided under the terms of the phase-in plan. No reimbursement will be approved for those indigent defense services that are not substantially in compliance with the terms of the phase-in plan.

**B.** For purposes of this guideline, “phase-in plan” means a comprehensive plan that proposes compliance with Commission guidelines and standards over a period of time rather than full compliance as of the time the comprehensive plan is approved. The “phase-in plan” shall specifically describe and designate:

1. those indigent defense services or courts that will be phased-in, and,
2. The time frame in which the phase-in of specific indigent defense services or courts will be achieved, including intermediate steps toward achieving compliance.

The period of time for the phase-in of indigent defense services or courts will be established by the Commission in consultation with the applying County, but normally the phase-in period will not be permitted to exceed five years.

**C.** Failure of a County to abide by the terms of a “phase-in plan” may result in the disapproval of all claims for reimbursement of defense services in non-capital cases submitted by the county. A county that is found to not be in compliance with the terms of its “phase-in plan” shall be required to comply with its original time frame, as set forth in its original “phase-in plan”, or such amended “phase-in plan” as the Commission may approve, in order to regain eligibility for reimbursement.

**Standard E**  
**Appointment of Counsel**

11/29/00 Experience as a judge will not be counted toward satisfying the practice requirements set forth in Standard E. Likewise, experience as stand-by counsel or a legal intern will not be counted toward satisfying the practice requirements set forth in Standard E.

6/19/13 The Commission will reimburse public defense expenses in CHINS/TPR cases beginning July 1, 2013; that the counties are to be given a reasonable amount of time to come into compliance on CHINS/TPR cases; and that the caseload standards for CHINS/TPR cases remain unchanged.

- 6/19/13 The CHINS/TPR training program prepared by the Marion County Public Defender Agency is approved for compliance to Standard E's 6 hour training requirement; and that the training program is available to counties by request to the Public Defender Commission's counsel
- 9/11/13 The 6 hours of training for CHINS/TPR qualification does not have to be CLE certified; however, if an attorney watches the 6 hours of training without a proctor, the attorney must attest to that fact to the Indiana Public Defender Commission. The Indiana Public Defender Council's CHINS/TPR training is approved for compliance to Standard E qualification.
- 9/11/13 An attorney with 6 hours of training in CHINS/TPR cases may accept a TPR case. If the attorney does not have one year experience in TPR cases, or has not litigated at least one TPR to completion, then the attorney must have an experienced co-counsel in any TPR case proceeding to trial. Co-counsel is not required until the TPR case goes to trial; the attorney with training may handle the case without co-counsel up to that point. Co-counsel is compensated for his/her services in the TPR case at or above the minimum hourly rate for assigned counsel set by the Indiana Public Defender Commission and this expense is reimbursable by the Public Defense Fund. The new case assignment is counted towards the lead counsel's caseload only.
- 3/20/19 The Trial Practice Institute (non-OWI specific) offered by the Public Defender Council, the Trial Advocacy Skills College offered by ICLEF, and the Indianapolis Building Trial Skills Course offered by NITA are approved as a trial practice course to replace one (1) of the two felony jury trials required to be qualified for Levels 1-4 cases under Standard E.
- 9/25/19 The Kentucky Department of Advocacy's Faubush Litigation Persuasion Institute is approved as a trial practice course to replace one (1) of the two felony jury trials required to be qualified for Levels 1-4 cases under Standard E.

## **Standard F**

### **Appointment of Appellate Counsel**

- 09/23/09 All appellate training courses sponsored by the Indiana Public Defender Council or the Indiana Continuing Legal Education Forum are approved by the Indiana Public Defender Commission for continuing legal education to qualify attorneys to handle non-capital appeals.

**Standard G**  
**Compensation of Salaried or Contractual Public Defenders**

- 02/02/00 A county's claim for secretarial expenses is not eligible for reimbursement under the Commission's Standards when the secretarial work was performed by the attorney and not claimed as an "out-of-pocket" expense.
- 06/20/12 Retirement is not included in salary and benefits under Standard G.
- 09/11/13 For counties where there is no position in the prosecutor's office corresponding with a position in the public defenders' office a full-time salaried or contract public defender must be paid not less than \$60,350 and a part-time salaried or contract public defender not less than \$30,175. Full and part time public defenders are defined as such by the number of cases assigned in a 12-month period. If a county does not want to contract for a full-time public defender at \$60,350, then the caseload should be reduced so as not to exceed the percentage of the public defenders' compensation compared to \$60,350 or the compensation of the deputy prosecutor in a similar position. Effective 1/1/14.

**Standard H**  
**Compensation of Assigned Counsel**

- 03/08/95 For non-capital cases where the Office of the State Public Defender is appointed pursuant to I.C. 33-9-11, counsel will be compensated at a minimum rate of \$60 per hour.
- 9/19/12 The hourly rate for appointed counsel shall be not less than \$70 per hour beginning January 1, 2013.
- 6/8/16 The hourly rate for appointed counsel shall be not less than \$90 per hour beginning January 1, 2017.

**Standard J**  
**Caseloads of Counsel**

- 12/05/01 Counsel may not handle cases on a pro bono basis to avoid caseload compliance issues.
- 05/04/06 New case assignments to each indigent defense attorney shall be reported by counties over a 12-month period, based on a rolling year, for purposes of substantial compliance with caseload maximums allowed by Standard J.
- 07/13/06 Any probation violation charge, under a Cause Number that was previously defended by a court-appointed public defender, shall not be

counted as a new case. Any probation violation, under a Cause Number that was previously defended by private counsel, and a public defender is appointed by the court to defend the probation violation charge; said case shall be counted as a new case.

9/24/08 The maximum allowable caseload for appeals in a 12-month period shall be different for appeals of a guilty plea and trial appeals. The maximum allowable guilty plea appeals shall be twice the number of maximum allowable trial appeals in a 12-month period.

9/24/08 (Amended 12/10/08) For purpose of determining compliance under Standard J, cases, other than Termination of Parental Rights and CHINS cases, should be counted as follows:

1. Each cause number counts as one case regardless of the number of charges or counts.
2. Each count or charge that is severed under the trial rules counts as a separate case.
3. Separate counts or charges joined under the trial rules count as one case.

12/10/08 For purpose of determining compliance under Standard J, Termination of Parental Rights and CHINS cases should be counted whenever a public defender is appointed to an indigent parent regardless of the number of children.

Example 1. A mother has five children by two different fathers and all the parents are indigent. Although the court will count this situation as five cases with five different cause numbers, the Commission considers this to be three cases because three different public defenders will be assigned, one to each of the parents. Only three TPR/CHINS cases should be reported to the Commission.

Example 2. A mother has five children by two different fathers and only the mother qualifies as indigent. The court will count this situation as five cases but the Commission considers this to be one case because only one public defender will be assigned. Only one TPR/CHINS case should be reported to the Commission.

Example 3. A mother has two children, no father has been identified but there are two putative fathers, the mother and the putative fathers all qualify as indigent. The Commission considers this to be three cases because a public defender will be assigned to the mother and to each putative father. Three TPR/CHINS cases should be reported to the Commission.

Example 4. A mother has three children and is pregnant with her

fourth. The three older children have the same father. Both mother and father qualify as indigent. The Commission considers this to be two cases because two public defenders will be assigned. Two TPR/CHINS cases should be reported to the Commission.

Example 5. Same situation as Example 4 but now the fourth child has been born. This child has the same father as the older children. The original case is still open. The Commission would not consider this to be a new case because no new public defender will be assigned. No new TPR/CHINS cases should be reported to the Commission.

Example 6. Same situation as Example 5 but the new child has a father different from the older children’s father. The original case is still open. The Commission would consider this to be a new case because the new father would be assigned a public defender. One new TPR/CHINS case should be reported to the Commission.

Example 7. Same situation as Example 6 however the original TPR/CHINS cases for the older children was closed before the new child was born. The Commission would consider this to be two new cases because a public defender would be assigned to the mother and to the new child’s father. Two new TPR/CHINS cases should be reported to the Commission.

12/10/08

Paragraph 3 is added to Standard J of the Standards for Indigent Services in Non-Capital Cases to allow public defense attorneys accepting cases in courts designated as Class D Felony only courts to have a maximum caseload of 225 Class D Felonies, over a 12-month period, for full-time, inadequately staffed public defenders. A maximum of 110 Class D Felonies, over a 12-month period, for part-time, inadequately staffed public defenders. The addition to Standard J reads as follows: “For Caseloads for Counsel Assigned to Class-D-Felony-Only Courts, Without Adequate Support Staff. Salaried, contractual, or assigned counsel that do not have support staff consistent with Table 2 should generally not be assigned more than the number of cases in Table 4 in a 12-month period.”

TABLE 4

Type of Case	Full Time	Part Time (50%)
Class D Felonies only	225	110

12/9/15

A TPR case shall always be counted and reported to the Commission separately, and in addition to, any underlying CHINs case.

### **Miscellaneous**

- 05/09/96 For counties whose approved comprehensive plan includes provisions for appellate services, the Commission will reimburse those counties for the expense of appellate transcripts in capital and non-capital cases where the appellate services plans are approved.
- 05/14/97 The Public Defense Fund covers only criminal trials and appeals; expenses related to post-conviction proceedings are not included.
- 08/17/97 Overhead for misdemeanors should be calculated on the same basis as salaries and litigation expenses related to misdemeanors.
- 07/14/98 (*Amended Guideline*) The Commission will not reimburse counties for defense expenses incurred in CHINS and Termination of Parental Rights matters, but will reimburse counties for defense expenses in mental health matters.
- 08/29/01 (*Amended Guideline, see 6/14/17*) The Commission will reimburse counties for the cost of insurance premiums (i.e. health and malpractice), but will not reimburse counties for costs associated with self-insurance programs.
- 02/26/03 The Commission will not reimburse counties for expenses incurred in misdemeanor cases where defendant received an enhanced sentence as a habitual offender. I.C 33-40-6-5 specifically excludes misdemeanors from reimbursement.
- 12/15/05 (*Amended Guideline*) To be eligible for maximum reimbursement, claims in non-capital cases must be received by the Commission not later than forty-five (45) days after the end of the calendar quarter in which they were incurred. Claims received 1 to 10 days later than 45 days after the end of the calendar quarter will be penalized 10% of the maximum eligible reimbursement. Claims received 11 to 20 days later than 45 days after the end of the calendar quarter will be penalized 25% of the maximum eligible reimbursement. The Commission will deny all late claims received more than 65 days after the end of the calendar quarter. A “claim” as used in this guideline includes all requested financial information relating to defense expenditures, caseload information in proper spreadsheet format, attorney qualifications and verifications. Upon written request demonstrating good cause, the Commission will consider setting aside the denial of a late claim. Whether a county’s quarterly claim is timely, late or denied, caseload data must be submitted for public defender offices, contract attorneys and assigned counsel.



07/13/06

The Commission authorized a new method for determining the amount of Non-Reimbursable County Expenditures for Indigent Defense:

- Counties are required to list all of their expenditures on the “Request for Reimbursement” form that has been designed.
- Counties are required to deduct from their total expenditures, the cost of salaries and overhead related to non-reimbursable misdemeanors and other non-reimbursable cases. (The amount of these Non-Reimbursable expenses must be shown on the face of the “Request for Reimbursement” form.)
- Counties are required to show in writing the method that they used to determine the amount of their non-reimbursable salaries and other expenses
- The Commission will accept a county’s explanation of its non-reimbursable indigent defense expenditures unless it is patently clear that the method of computation is neither fair nor reasonable.
- The change is effective beginning with second quarter reimbursement requests for calendar year 2006.
- Counties will be afforded additional time, i.e., until August 31, 2006, in which to submit without penalty their second quarter requests for reimbursement.
- Respecting first quarter payments for 2006, Counties can accept the Commission’s computation pursuant to its formula for non-reimbursable indigent defense expenditures; or, alternatively, they can submit additional information to the Commission explaining their non-reimbursable defense expenditures, and the Commission will then determine whether the county may be due a supplemental payment.

6/25/08

When the Public Defender Commission terminates all non-capital reimbursement to a county as of the end of the fiscal year, there will be no further reimbursements to that county for non-capital expenditures after June 30<sup>th</sup> of that fiscal year regardless of when the expenses were incurred.

Section 33-40-7-11(c) of the Indiana Code sets forth the action to be taken when counties in the public defense program are out of compliance:

- If a county's indigent defense services fail to meet the standards adopted by the Indiana public defender commission, the public defender commission shall notify the county public defender board and the county fiscal body of the failure to comply with the Indiana public defender commission's standards. Unless the county public defender board corrects the deficiencies to comply with the standards not more than ninety (90) days after the date of the notice, the county's eligibility for reimbursement from the public defense fund terminates at the close of that fiscal year.

03/25/09 If a county decides not to submit a request for reimbursement for non-capital expenditures in a particular quarter or quarters, the Commission will still consider the county eligible to participate in the public defense program. When the county decides to begin requesting reimbursements for non-capital expenditures, it must provide the public defender caseloads for all quarters in which it did not request reimbursement unless more than twelve months have passed since the county's last request for reimbursement.

12/12/12 Appeals of probation violation cases should be counted on the New Case Assignment Worksheet under the category for guilty plea appeals.

12/12/12 Indianapolis Bar Association's continuing legal education seminar titled Primer on Indiana State Criminal Appeals is approved by the Indiana Public Defender Commission for 6 CLE hours required for appellate practice compliance under Standard F.

9/11/13 This guideline is intended to establish use of the Supplemental Public Defender Services Fund under IC 33-40-3 *et seq.* Under IC 33-40-3-3, the supplemental public defender services fund may be used only to supplement the provision for court appointed legal services and may not be used to replace other funding of court appointed legal services. All counties participating in the Public Defender reimbursement program must spend the Supplemental Public Defender Services Fund as specified below, whether or not they specifically seek reimbursement for expenditures from that Fund.

The Supplemental Public Defender Services Fund may not be used for any ongoing public defender salaries or benefits, or to pay the hourly or contract rates of attorneys providing ongoing public defender services in any class of criminal case, juvenile delinquency case, or juvenile dependency case. The fund may be used for any of the following:

1. The cost of hiring one-time or temporary public defenders in case-specific circumstances, such as the hiring of conflict counsel on a case with multiple defendants or the hiring of temporary contract counsel to stay in compliance with caseload standards. Claims made under this section must specify the particular circumstances that warrant the hiring of additional counsel.
2. One-time or temporary non-attorney costs of providing quality public defense on a case-specific basis. These would include but not be limited to investigative costs, expert consultant fees, witness fees, social work or mental health services, costs of defense requested depositions and transcripts, and mileage reimbursements.
3. One-time or temporary administrative, building, or training expenses.

Claims to the supplemental public defense fund are reimbursable by the Public Defender Commission. Claims to this fund are to be filed by the chief or managing public defender or the county public defender board. In counties not required to have a public defender board, claims are to be filed by the presiding judge.

12/14/16      Guideline for Reimbursement on Building Related Expenses

A building related expense generally includes land purchase, building purchase, facility build-out or remodel, fixtures, and any other item that may reasonably be expected to have at least a 10 year useful life. It does not include furniture or office equipment, which are reimbursable in the same manner as all other indigent defense expenses. All building related expenses that are appropriate, necessary, and are primarily for the provision of indigent defense services, are a reimbursable expense as long as the total is comparable to, or less than, the cost if the county were to instead lease a comparable space. Eligible expenses will be reduced proportionally if only a portion of a building is being used for indigent defense. To be eligible for reimbursement for a building related expense the county must:

- 1) Verify that estimated project costs cover the entire scope of the project
- 2) Provide comparable space lease costs and, if applicable, any additional build-out expenses that would not be included in the rent to Commission staff
- 3) Once the project has been completed, the final costs shall be

submitted to Commission staff for confirmation that the total includes:

- a. Only indigent defense expenses;
  - b. That the expenses are reasonable and necessary; and
  - c. The expenses otherwise follow all Commission Standards and Guidelines.
- 4) If Commission staff denies expenses the county may appeal to the Commission as a whole.
  - 5) If final project costs are more than the market rent of comparable leased space, the Commission will limit reimbursement to that of the comparable lease option.

Once the final, reimbursable amount is approved by staff, these expenses shall be submitted to the Commission evenly on a quarterly basis over a 10-year (40 quarter) period. Reimbursement will only begin once all expenses are final and the entire project is being used for indigent defense. Reimbursement will cease if the space is no longer used for indigent defense or the building is sold.

Building projects which total less than \$40,000 may still be submitted to the Commission for reimbursement as a lump sum in the quarter that the project is complete and is being used for indigent defense. The Commission may deny reimbursement if the county routinely submits building related projects under the \$40,000 threshold without adequate justification. The Commission, at its discretion, may make exceptions or modify application of these rules upon request.

- 06/14/17 The Commission will reimburse county self-insured expenses, however, reimbursement will be limited, per covered individual, to the state cost for family or individual insurance depending on what the employee chose. The Commission will post on its website and in its newsletter updated caps, based upon state cost, each year.
- 3/20/19 The Commission may seek a “clawback” or recoupment of reimbursed funds if it is later determined that a portion of the reimbursement was ineligible for reimbursement or should have otherwise not been reimbursed. This recoupment of funds will apply only to the ineligible portion and will be deducted from a future reimbursement (or future reimbursements if the commission approves a repayment plan at the county’s request).

[Revised 9/25/19]