

MINUTES

INDIANA PUBLIC DEFENDER COMMISSION

DATE OF MEETING: March 21, 2018

Time: 2:00 PM EST

LOCATION: Indiana Public Defender Commission

309 W. Washington St., Ste. 501

Indianapolis, IN 46204

The meeting was called to order at approximately 2:00 p.m. by Chair Mark Rutherford. Present at the meeting were: Hon. Kelsey Hanlon, Larry Landis, Richard Bray, Hon. Steven Meyer, David Hensel, Rep. Ryan Dvorak; present electronically were: Sen. Eric Koch; Hon. Mary Ellen Diekhoff, Sen. Greg Taylor, and Rep. Washburne. Staff present at the meeting were: Kathleen Casey, Derrick Mason, Jennifer Pinkston, Andrew Cullen, and Torrin Liddell. Present in the audience were Jim Abbs, Chief Public Defender for Noble County; Gretchen Etling, Chief Public Defender Vigo County; Jeremy Gooch, Chief Public Defender for Hendricks County; Neil Weismann, Deputy Chief Public Defender St. Joseph County; Cody Eckhart, Legislative Assistant for House Republicans; and Ann Sutton and Ray Casanova, Marion County.

1. Approval of Minutes from December 13, 2017 meeting

Mr. Hensel moved to approve the minutes, which Mr. Bray seconded. Motion passed unanimously.

Derrick Mason welcomed Mr. Torrin Liddell to the Commission team and introduced him to the Commission members. He noted that Mr. Liddell would be looking into how to gather more data to analyze the effectiveness of the Commission. He would also work on determining the cost-per-case and whether there is a difference between Commission and non-Commission counties in terms of cost savings. Mr. Mason noted that the next Commission newsletter would be sent out within the month. Mr. Rutherford welcomed Mr. Liddell to the team.

2. Legislative Update

Mr. Mason reviewed the legislative efforts of the Commission during the 2018 short session to authorize misdemeanor reimbursement as well as seek augmentation of Public Defense Fund. A bill was also approved to move the administration of the Public Defense Fund to the Commission. A comprehensive bill was introduced that was authored by Rep. Mahan and sponsored by Rep. Washburne and Rep. Dvorak, however it did not move forward. The legislative services agency believed that did have a fiscal impact; for that reason the bill was not moved.

The Commission staff were successful in obtaining control of the Public Defense Fund by amending Senate Bill 238 to include language that transferred control from the Office of Judicial

Administration. This control will be statutory rather than a memorandum of understanding with the Office of Judicial Administration.

3. Workload Study / Task Force Update

Mr. Mason informed the Commission that the workload study has entered Phase II and that efforts were currently underway to assemble a list of panelists to answer surveys that will help develop the correct amount of time to spend on each case. Letters to attorneys who will be surveyed had been received and Mr. Mason reported that feedback has been positive. He said that there would be two (2) rounds of surveys followed by an in-person discussion. He also stated that the Commission would be submitting a bulk data request to the Odyssey Case Management System for more information from the Office of Judicial Administration.

Ms. Casey updated the Commission on the current work of the Task Force which included Listening Tours and fact finding. She noted the upcoming April 20th meeting and gave an anticipated report release date in August 2018.

4. Commission Staff Goals Update

Mr. Mason noted that at a previous meeting Rep. Dvorak suggested that it would be useful for Commission members to set annual staff goals. Mr. Mason said that staff was receptive to this project. Mr. Mason said this objective then begged the question of what are the Commission's goals and mission statement. The Commission has never formally outlined goals or measured effectiveness.

As an example of metrics to be developed in the future, Mr. Mason said that he could report that participating counties have a higher number of appeals and that their jail populations are lower. He said that this type of data will be useful for the legislature and for recruitment of counties to the program.

Mr. Mason asked whether there were any goals or questions that the Commission members would like to direct the staff to research. He anticipated a more formal report in June as well as a mission statement to be approved at that time.

Mr. Hensel said that he would like to ask the counties and public defender offices how we could improve and where the process of Commission submission could be made easier. Mr. Mason agreed and also said that the staff plan to hold another annual training at which there will be an opportunity to provide feedback.

5. Commission Sub-Committee

Mr. Mason reviewed the December 2016 approval to create a Commission subcommittee to do a whole-scale review of Commission standards. Mr. Landis requested that staff update the commentary to the standards as well. Mr. Mason said that the Task Force has taken on much of that responsibility of reviewing the current Commission practices and so the process has been delayed upon recommendation of the Task Force.

Mr. Mason said that with increased staff the Commission had begun the process of reviewing pay parity in the counties. He said that pay parity would be the first standard reviewed by the subcommittee. Mr. Mason hoped he could ask the subcommittee to meet in May or April to begin the process.

Mr. Mason reviewed the staffing of the subcommittee, which would include a gubernatorial appointment, an appointment from the Indiana Criminal Justice Institute, a volunteer Supreme Court appointment, as well as an appointment from the legislature. Mr. Mason also stated he hoped to have non-Commission members including a Chief Public Defender, an additional appointment from the Chief Public Defenders, as well as an appointment from the Public Defender Council Board and appointment of one practicing contracting public defender as well as a salaried public defender.

Chairman Rutherford said that it was likely to have the pay parity standard reviewed by the Fall. Mr. Mason agreed and said that the goal would be to bring the reviewed standard to the full Commission for approval.

Hon. Hanlon volunteered to be on the subcommittee. Rep. Washburne asked whether a budget would be necessary and Mr. Mason said that money was already appropriated for travel expenses, and that no additional money should be needed. There were already funds set aside for travel at the previous meeting's Commission budget approval.

6. Financial Status of Public Defense Fund

Mr. Mason reviewed the financial status of the Public Defense Fund. He said that the budget reflected the request by Commission members to demonstrate what has been spent and what has not been spent. He said that the expenditures were in line with what was expected. He said that the budget presented in materials reflected accuracy through the end of February 2018.

7. Requests for 50% Reimbursement in Capital Cases

Mr. Mason stated that it was a light quarter for capital requests. Only Lake County submitted requests for their case. He said that the Commission would receive a capital request from Allen County soon, and that they had resolved the issue of a non-Criminal Rule 24 attorney on a capital case.

Hon. Hanlon moved to approve the request for reimbursement, and Hon. Meyer seconded the motion. Motion passed unanimously.

INDIANA PUBLIC DEFENDER COMMISSION

Reimbursement Requests in Capital Cases

March 21, 2018

COUNTY	DEFENDANT	TOTAL
Lake	Vann	\$14,963.25
TOTAL		\$14,963.25

8. Status of County Compliance with Non-Capital Caseloads

Mr. Mason reported that compliance fell for the third quarter in a row. Several new counties were out of compliance by one attorney for the first time, and Commission staff were working to resolve the overage.

Mr. Mason said that staff had begun to list the history of compliance for each county in materials provided to Commission members for meetings. He began with Clark County. He said that the Commission sent Clark County a 90-day letter warning that the county risked suspension of non-capital reimbursements in December of 2016. He said that the county had hired some additional staff, but less than what Mr. Mason had recommended to come back into compliance. The additional hires have not been sufficient to eliminate overages. However, Mr. Mason said that the county has been vastly better than in previous quarters. Mr. Mason said that based on current trends, the county will still be unable to come into compliance within the next year.

Mr. Mason recommended that because this was the eighth quarter out of compliance, an additional 90-day letter should be sent. He said that the County hoped this would help hire an additional two employees by demonstrating to the county council the danger of losing reimbursement for remaining out of compliance.

Chairman Rutherford asked for clarification as to whether the next 90-day letter would suspend reimbursement at the next Commission meeting. Mr. Mason said that there were options, such as creating a new plan, however suspension of payment was possible. Mr. Mason said he usually asks counties what the impact of the 90-day letter would be should one be sent.

Chairman Rutherford asked for questions or concerns about Clark County. Rep. Washburne said that it was important for the Commission to be consistent. He believed that if the county had been out of compliance for quite some time, it was important to act consistently. He was comfortable with handling Clark County in the way recommended as long as it was not different from how other counties are treated.

Mr. Landis said he supported sending the letter and noted that the Indiana Task Force on Public Defense would be holding a Listening Tour there tomorrow and that both the Chief and a Public Defender Board member planned on being present. Mr. Landis said that the extent of the disorganization was not known until the new Chief was hired.

Rep. Dvorak said that there should be a more systemic approach applied to the counties. Rep. Dvorak would like to see less of the allowance of waiver. He would like to see a graduated list of sanctions for counties dependent on the number of quarters out of compliance. Mr. Landis agreed with the proposal from Rep. Dvorak.

Mr. Mason then reviewed Decatur County. He noted it has also been out of compliance for seven previous quarters. He said that originally the Decatur County plan was well-written and planned, however the caseloads increased to the point that there was no room to assign cases. Previously, the compliance issues were minimal, however problems have progressed and now are much higher. He noted that Decatur did hire a new public defender in January 2018. Mr. Mason recommended

sending a 90-day letter with a note that if county was in quarterly compliance going forward the sanction would be reconsidered.

Chairman Rutherford called for a vote on Clark County. Mr. Hensel made a motion to send a 90-day letter, Rep. Dvorak seconded. Motion passed unanimously.

Chairman Rutherford called for a vote on Decatur to send a 90-day letter with opportunity for quarterly compliance. Rep. Dvorak moved and Mr. Bray seconded. Motion passed unanimously.

Mr. Mason then addressed Fayette County. The compliance had worsened from the third quarter. He had not received a response from the county. He noted that the county has a history of intermittent compliance. He recommended a 90-day compliance letter. He said that the Commission had not sent a 90-day letter in recent memory. The Chairman clarified that this was a standard 90-day letter with sanction possible.

Hon. Meyer moved to send the letter, and Mr. Hensel seconded. Motion passed unanimously.

Fountain and Green counties were addressed next by Mr. Mason. He said that it was possible to rectify their caseload overages next quarter. He recommended approving reimbursement.

Mr. Mason then addressed Howard County, which recently raised pay for attorneys to handle more cases. A 90-day letter had been sent in 2017. They also approved two (2) new hires in January of 2018. He stated that the county had achieved quarterly compliance and they do expect to be in compliance in the future. He recommended approval of reimbursement.

Jefferson County was noted by Mr. Mason next, and stated that their issue would be rectified in upcoming quarters.

Mr. Mason said that Jennings County did receive a 90-day letter in December 2016 and in response hired an additional lawyer. He said that the county's quarterly assignments are now in compliance and that they are likely to achieve compliance within the year. He said that the county has had low-level compliance issues for years and that there was a possibility to send a 90-day letter indicating that quarterly compliance would be required for the next year. Mr. Mason said his hope was that no letter was needed.

Mr. Mason then addressed Lagrange County. He said that there was one attorney out of compliance and that it was possible to fix the overage based on caseload availability.

In Owen County, Mr. Mason reported that the county has switched to monthly monitoring and that the way cases are assigned has rectified the problem.

Perry and Ripley were addressed together by Mr. Mason, and he did not recommend action on these counties. In St. Joseph, the expectation was that compliance would be achieved in the next quarter.

Mr. Weismann noted that in his county (St. Joseph) the TPR/CHINS cases were causing distress in the caseloads.

In Shelby County, Mr. Mason noted it was the second quarter out of compliance but that compliance has worsened. Mr. Mason said that the county hired an additional attorney. Mr. Mason recommended a 90-day letter stated that if the new hire allows the county to achieve quarterly compliance, no sanction would be necessary, but if not then a plan would be required by June. Rep. Dvorak moved to send the letter, and Hon. Hanlon moved. Motion passed unanimously.

Mr. Mason said that there is a state-wide trend of excess caseload. As caseloads have risen, because of the increase in TPR/CHINS and other cases, that available room has been reduced and now many counties are facing caseload issues.

9. Requests for Reimbursements for Non-Capital Reimbursement

Mr. Mason noted that this is a record reimbursement and has exceeded the previous record by approximately \$400,000. He noted that Hendricks County continues to have increasing staff and there are two more counties that joined in January (Miami and Scott). Both have Chief Public Defenders. However, Mr. Mason said that funds are still available for the full forty percent.

Mr. Mason noted that thanks to the work of Mr. Liddell, Grant County had an error in a previous reimbursement and that this quarter's reimbursement was reduced by approximately \$26,000.

Mr. Mason also stated that in Orange County, that received a portion of their reimbursement which was part of a penalty previously.

Mr. Mason recommended reimbursement of all counties listed, including the counties that were to be sent 90-day letters.

Hon. Meyer asked whether Mr. Mason predicted this amount each quarter. Mr. Mason said that with the addition of two more counties, this number might be more. Mr. Landis noted the availability of a reserve. Counties will not fear pro-ration during this biennium. Mr. Mason said that while counties are interested, the reality is that he is not pushing as hard for recruitment to ensure that full reimbursement is given to the counties.

Mr. Landis noted that at the June meeting there would need to be a decision about how much money to request during the next Legislative budget year.

Mr. Dvorak asked whether the budget request would consider changes suggested by the Task Force. Mr. Mason suggested that the budget request that is submitted should be traditional. Mr. Mason then stated that a bill would then be submitted that has a fiscal impact separately. However, Mr. Mason said that there had been internal deliberations that would reflect Task Force recommendations.

Mr. Landis said that there were a number of ways to submit the budget. Rep. Dvorak recommend a meeting with Ways and Means staff. Mr. Mason said that part of the budget challenge was that the Commission allows rolling applications that mean that counties may join at any time.

Rep. Washburne stressed the need for augmentation. Mr. Landis proposed meetings with legislative staff to help determine the best course of action. Chairman Rutherford moved to approve the reimbursement, and Mr. Bray seconded. Motion passed unanimously after a vote.

INDIANA PUBLIC DEFENDER COMMISSION

Fourth Quarter 2017 Requests for Reimbursements in Non-Capital Cases

3/21/2018

COUNTY	Late Factor	2017 Period Covered	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	0.00	7/1-9/30	\$89,516.07	\$7,665.65	9%	\$81,850.42	\$32,740.17
ALLEN	0.00	7/1-9/30	\$949,565.50	\$31,673.11	3%	\$917,892.39	\$367,156.96
BENTON	0.00	7/1-9/30	\$14,285.40	\$2,484.42	17%	\$11,800.98	\$4,720.39
BLACKFORD	0.00	7/1-9/30	\$44,107.25	\$15,188.34	34%	\$28,918.91	\$11,567.56
BROWN	0.00	7/1-9/30			#DIV/0!	\$0.00	\$0.00
CARROLL	0.00	7/1-9/30	\$62,088.25	\$18,927.72	30%	\$43,160.53	\$17,264.21
CASS	0.00	7/1-9/30	\$167,182.75	\$21,730.65	13%	\$145,452.10	\$58,180.84
CLARK	0.00	7/1-9/30	\$280,546.78	\$21,524.58	8%	\$259,022.20	\$103,608.88
CRAWFORD	0.00	7/1-9/30			0%		
DECATUR	0.00	7/1-9/30	\$79,266.20	\$16,208.49	20%	\$63,057.71	\$25,223.08
DEKALB	0.00	7/1-9/30	\$140,262.96	\$14,205.24	10%	\$126,057.72	\$50,423.09
DELAWARE	0.00	7/1-9/30	\$366,460.73	\$6,054.88	2%	\$360,405.85	\$144,162.34
FAYETTE	0.00	7/1-9/30	\$102,912.73	\$11,602.19	11%	\$91,310.54	\$36,524.22
FLOYD	0.00	7/1-9/30	\$147,120.65	\$10,925.89	7%	\$136,194.76	\$54,477.90
FOUNTAIN	0.00	7/1-9/30	\$48,195.71	\$10,150.25	21%	\$38,045.46	\$15,218.18
FULTON	0.00	7/1-9/30	\$64,857.22	\$17,688.33	27%	\$47,168.89	\$18,867.56
GRANT	0.00	7/1-9/30	\$282,938.60	\$5,228.84	2%	\$277,709.76	\$84,719.20
GREENE	0.00	7/1-9/30	\$124,255.96	\$9,654.35	8%	\$114,601.61	\$45,840.64
HANCOCK	0.00	7/1-9/30	\$139,383.12	\$15,099.00	11%	\$124,284.12	\$49,713.65
HENDRICKS	0.00	7/1-9/30	\$245,142.16	\$41,524.62	17%	\$203,617.54	\$81,447.02
HENRY	0.00	7/1-9/30			0%		
HOWARD	0.00	7/1-9/30	\$410,827.43	\$37,103.07	9%	\$373,724.36	\$149,489.74
JACKSON	0.00	7/1-9/30	\$162,325.61	\$6,680.63	4%	\$155,644.98	\$62,257.99
JASPER	0.00	7/1-9/30	\$117,217.06	\$35,549.95	30%	\$81,667.11	\$32,666.84
JAY	0.00	7/1-9/30	\$83,204.01	\$13,062.30	16%	\$70,141.71	\$28,056.68
JEFFERSON	0.00	7/1-9/30	\$139,297.38	\$23,288.51	17%	\$116,008.87	\$46,403.55
JENNINGS	0.00	7/1-9/30	\$156,724.62	\$14,622.28	9%	\$142,102.34	\$56,840.94
KNOX	0.00	7/1-9/30	\$206,077.91	\$39,055.38	19%	\$167,022.53	\$66,809.01
KOSCIUSKO	0.00	7/1-9/30	\$225,362.56	\$41,195.31	18%	\$184,167.25	\$73,666.90
LAGRANGE	0.00	7/1-9/30	\$74,649.32	\$11,049.11	15%	\$63,600.21	\$25,440.08
LAKE	0.00	7/1-9/30	\$1,225,699.51	\$5,290.79	0%	\$1,220,408.72	\$488,163.49
LAPORTE	0.00	7/1-9/30	\$247,216.51	\$39,862.43	16%	\$207,354.08	\$82,941.63
LAWRENCE	0.00	7/1-9/30	\$233,618.26	\$19,131.50	8%	\$214,486.76	\$85,794.70
MADISON	0.00	7/1-9/30	\$520,848.46	\$24,954.68	5%	\$495,893.78	\$198,357.51
MARION	0.00	7/1-9/30	\$5,832,123.93	\$649,339.79	11%	\$5,182,784.14	\$2,073,113.66
MARTIN	0.00	7/1-9/30	\$43,882.42	\$10,175.87	23%	\$33,706.55	\$13,482.62
MIAMI	0.00	7/1-9/30			0%		
MONROE	0.00	7/1-9/30	\$535,686.67	\$71,400.97	13%	\$464,285.70	\$185,714.28
MONTGOMERY	0.00	7/1-9/30			0%		
NEWTON	0.00	7/1-9/30			0%		
NOBLE	0.00	7/1-9/30	\$165,607.76	\$25,058.08	15%	\$140,549.68	\$56,219.87
OHIO	0.00	7/1-9/30	\$18,666.47	\$1,972.96	11%	\$16,693.51	\$6,677.40
ORANGE	0.00	7/1-9/30	\$207,557.40	\$44,767.28	22%	\$162,790.12	\$77,114.06
OWEN	0.00	7/1-9/30	\$82,759.89	\$12,349.24	15%	\$70,410.65	\$28,164.26
PARKE	0.00	7/1-9/30	\$35,696.26	\$10,168.03	28%	\$25,528.23	\$10,211.29
PERRY	0.00	7/1-9/30	\$60,216.67	\$9,963.91	17%	\$50,252.76	\$20,101.10
PIKE	0.00	7/1-9/30	\$113,805.77	\$5,269.22	5%	\$108,536.55	\$43,414.62
PULASKI	0.00	7/1-9/30	\$105,080.67	\$18,442.84	18%	\$86,637.83	\$34,655.13
RIPLEY	0.00	7/1-9/30	\$76,545.08	\$4,702.75	6%	\$71,842.33	\$28,736.93

RUSH	0.00	7/1-9/30	\$116,072.88	\$23,575.43	20%	\$92,497.45	\$36,998.98
SAINT JOSEPH	0.00	7/1-9/30	\$682,132.33	\$72,551.66	11%	\$609,580.67	\$243,832.27
SCOTT	0.00	7/1-9/30			0%		
SHELBY	0.00	7/1-9/30	\$124,767.93	\$14,640.00	12%	\$110,127.93	\$44,051.17
SPENCER	0.00	7/1-9/30	\$38,759.42	\$6,722.47	17%	\$32,036.95	\$12,814.78
STEUBEN	0.00	7/1-9/30	\$96,134.29	\$20,548.62	21%	\$75,585.67	\$30,234.27
SULLIVAN	0.00	7/1-9/30	\$59,988.17	\$16,927.97	28%	\$43,060.20	\$17,224.08
SWITZERLAND	0.00	7/1-9/30	\$79,113.51	\$6,586.77	8%	\$72,526.74	\$29,010.70
TIPPECANOE	0.00	7/1-9/30	\$978,515.56	\$242,221.49	25%	\$736,294.07	\$294,517.63
UNION	0.00	7/1-9/30	\$41,199.34	\$9,101.00	22%	\$32,098.34	\$12,839.34
VANDEBURGH	0.00	7/1-9/30	\$651,157.80	\$122,761.13	19%	\$528,396.67	\$211,358.67
VERMILLION	0.00	7/1-9/30	\$76,914.52	\$13,887.84	18%	\$63,026.68	\$25,210.67
VIGO	0.00	7/1-9/30	\$604,608.93	\$87,542.17	14%	\$517,066.76	\$206,826.70
WABASH	0.00	7/1-9/30	\$82,410.94	\$16,670.46	20%	\$65,740.48	\$26,296.19
WARREN	0.00	7/1-9/30	\$41,598.35	\$8,914.50	21%	\$32,683.85	\$13,073.54
WASHINGTON	0.00	7/1-9/30	\$157,993.18	\$13,191.00	8%	\$144,802.18	\$57,920.87
WELLS	0.00	7/1-9/30			0%		
WHITE	0.00	7/1-9/30			0%		
WHITLEY	0.00	7/1-9/30			0%		
TOTAL			\$18,260,152.82	\$2,127,835.94		\$16,132,316.88	\$6,438,560.06
Grant County has \$26,364.70 subtracted for overbilling in 3Q17; Orange County has \$11,998.01 added for timely filing per 4/17 mtg							

10. Staff Report

Mr. Mason said that he had been in communication with Vanderburgh County. He would continue to work with Steve Owens, the Chief Public Defender, to determine who to invite to attend the June meeting.

Mr. Landis noted that all eleven members of the Commission had participated in the meeting. He thanked everyone for being prepared. Hon. Meyer made a motion to adjourn, which passed after a unanimous vote.

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

June 13, 2018

309 West Washington Street, Suite 500

2:00 p.m.

Commission members present were: Sen. Eric Koch, Mr. Richard Bray, Mr. David Hensel, Mr. Larry Landis, Rep. Ryan Dvorak. Present telephonically were Chairman Mark Rutherford, Judge Mary Ellen Diekhoff, Rep. Thomas Washburne.

Present in the audience were: Cody Eckert, House Republican Caucus; Ray Casanova, Marion County Public Defender Agency; Neil Weisman, St. Joseph County; Jim Abbs, Chief Public Defender Noble County; Gretchen Etling, Chief Public Defender Vigo County; David Shircliff, Chief Public Defender Lawrence County; Josh Stigdon, Chief Public Defender Scott County; Steve Owens, Chief Public Defender Vanderburgh County; Abe Navarro, Chief Public Defender Clark County; Elizabeth Castle Lane and Mark Clark, Washington County; Bernice Corley, Executive Director, Public Defender Council. Commission Staff present were Kathleen Casey, Derrick Mason, Torrin Liddell, Jennifer Pinkston.

1. Approval of Minutes from previous meeting

Mr. David Hensel chaired the meeting at the request of Chairman Rutherford, who was present telephonically. A motion was made to approve the minutes by Mr. Bray, seconded Mr. Landis. Motion passed unanimously.

2. Vanderburgh County Compliance with TPR/CHINS

Mr. Mason reviewed that Vanderburgh County has operated under an exception to CHINS/TPR caseloads. In 2015, the county requested a carve-out for CHINS/TPR to forego reimbursement in exchange for an exception from caseload limits. Within recent months, the CHINS/TPR caseloads had risen to the point that staff brought the issue of the caseload exception back to the Commission. As of the meeting, Mr. Mason reported that CHINS/TPR attorneys in Vanderburgh County were handling between 200-400% of an allowable caseload.

At the last Commission meeting, the Commission asked that Vanderburgh County officials attend the next meeting to discuss these overages. As part of that discussion, Mr. Mason communicated that the exception to caseload limits was never intended to be permanent but rather an exception to allow the county time to remedy the problem without sacrificing the entire program. A letter was sent to the Chief Public Defender Steve Owens in March. Mr. Mason noted the presence of Chief Public Defender Steve Owens as well as attorney for the Vanderburgh County Counsel, Mr. Ahlers, on the phone. Mr. Mason noted in the materials the original letter sent to Vanderburgh County as well as the response letter from Mr. Harris requesting a 6-month extension to the caseload exceptions.

Mr. Owens clarified that Mr. Ahlers represented the Vanderburgh county council.

Mr. Mason asked Mr. Owens to report on the progress made since the 2015 meeting regarding remedying the CHINS/TPR overages. Mr. Owens responded that in 2015 he was under the impression that the Commission had allowed a carve-out from restrictions on CHINS/TPR caseloads applicable to other counties.

When he received the letter in April of 2018, he met with county officials and met on May 15 with county commissioners and council. He explained that the issue was not coming up with a plan to come into compliance; the issue was the funding. His budget was going to be due to the county auditor on June 29. At the current meeting point, Mr. Owens pointed out there were two or three statewide studies that may impact CHINS and TPR caseload numbers. He said that he knew that these studies may have a significant impact on caseloads based on a conversation with Dean Lefstein.

He said that any plan developed would have to be a phase-in plan. It would cost Vanderburgh County 400-500 thousand dollars to come into full compliance over and above the reimbursement. Additional lawyers, as well as support staff and office space and equipment would be required.

He said that more time will be needed to review options. At the same time, he said that the county must comply with a jail mandate which is also taking up funds from the county. He asked to set this matter for consideration in approximately six months.

Mr. Ahlers echoed the need for more time and the issues with funding difficulty.

Mr. Landis asked since 2015, how much additional funding has the county appropriated for CHINS cases. Mr. Owens said since 2015, no additional funding had been requested. Mr. Landis asked how much Mr. Owens had requested in the 2019 budget, and Mr. Owens said that his intent, depending on the actions of the Commission, would be to ask for a slight increase, but noted that he had been directed not to ask for any salary increases and that Vanderburgh County had “essentially” a hiring freeze. He noted it would be “an uphill battle” to ask for additional funding.

Mr. Landis said that his recollection was not that it was a permanent exemption for Vanderburgh County. Mr. Hensel said that he was on the Board then, but he had the same recollection that it was not meant to be a permanent exemption to Vanderburgh County. He said such an exemption would damage the Commission’s credibility with other counties.

Mr. Owens said that he was at that meeting and many issues were addressed. He does not know what the Commission’s intent was but there was no indication that the Commission expected the county to move into compliance. He noted that the county had been out of compliance since 2001.

Mr. Rutherford said that there may be audio recordings from the meeting to listen to. Rep. Dvorak said that Mr. Owens has been to many meetings and that compliance has been discussed many times. He does not understand why it seems to be a surprise as to why the Commission would be interested in this issue. Mr. Owens stated that if they are forced to come into compliance, they will drop out of the Commission program.

Rep. Dvorak asked why it was possible to comply with the DOC mandate and not the Commission. Mr. Owens said that he did not know. Mr. Ahlers said that there was state assistance to comply with the DOC mandate.

Mr. Hensel said he was not unsympathetic that standards are changing and being reviewed. What he is concerned by is the response of the county asking to put off a decision for a year. He would like to see a greater effort from the county to remedy the situation.

Mr. Dvorak said that it was important to note that the Commission does reimburse Vanderburgh County approximately one million dollars per year. He said that carve outs are no longer possible. If the Commission does a permanent carve out, then every county will want one as well.

Mr. Landis asked Mr. Ahlers whether the county would commit to spending the requested reimbursement on remedying the CHINS issue. Mr. Ahlers said he could not commit to that without approval of the county council.

Mr. Mason noted that a 90-day warning of suspension letter had not yet been sent to the county.

Rep. Washburne stated that in his view, if the Commission wished to be punitive there were fair grounds. However, in mitigation he does feel that the jail is a large issue for the county. He said that the county would need to incorporate their entire criminal justice budget, which would include public defender work, into that process. He said that the budget timings were real issues and the studies are real as well. He believed that one year was a good way to plan for the county to regain compliance; he believed this would be equitable in light of the issues and past confusion.

Mr. Bray asked whether all counties are required to have caseload limits in place for CHINS cases. Mr. Mason said that after reimbursement for CHINS cases was started in 2014, all counties subsequently came into compliance on CHINS. Vanderburgh is the only county that is still not in compliance.

Mr. Landis said that he is willing to accept that there was a misunderstanding. However he does not see how to justify another year of non-compliance. If this reimbursement is approved today, he believed that the money should be used to reduce non-compliance in CHINS. Otherwise, he said that the county should be sent a 90-day letter.

Mr. Hensel proposed sending 90-day letter, with a request for Vanderburgh County representatives to appear before the Commission in December. He said it would be helpful for Vanderburgh in December to demonstrate how the county was able to take efforts to remediate the situation.

Rep. Dvorak proposed sending a 90-day letter with a request to attend in September with a progress report. There would be an option to suspend reimbursement should no progress be made at the December meeting.

Derrick Mason clarified for Mr. Ahlers that the 90-day letter is statutorily required to suspend a county from eligibility to be reimbursed for public defense expenses. He said the motion

included a requirement to have Vanderburgh County attend the Commission meeting in September with a report on progress and the Commission would decide how to proceed at that meeting.

Mr. Ahler said he was concerned with this proposal because the letter he received from the Commission thirty days prior was the first notice that there was an issue with their public defender program. He understood that letter to be the beginning of a conversation about the issue.

Mr. Hensel said that there was a motion to send a 90-day letter to Vanderburgh County. Mr. Landis made a second. Mark Rutherford abstained from the vote. The vote was unanimous.

3. Approve an increase in pay for the Chief Public Defenders to be effective Jan 1, 2019

Mr. Mason explained that the Supreme Court had raised the full-time prosecutor and Chief Deputy Prosecutor salaries. He said that typically the counties are allowed until January of 2019 to raise the Chief pay to match that of the prosecutor. He asked that the Commission approve those salaries with an effective date of January 2019.

Mr. Hensel asked for any questions. Neil Weissman asked whether this applied to minor positions. Mr. Mason clarified this would include those positions as well. Mr. Landis made a motion, Mr. Hensel seconded. Motion passed unanimously.

4. Approval of Comprehensive Plans

Mr. Mason noted that Clinton County submitted their Compressive Plan. He recommended approval. Mr. Landis asked who prepared the roster of attorneys. Mr. Mason said that Clinton County intended that the attorney roster would be prepared by the Board and the judges would appoint from that list. Mr. Landis asked whether the appointment would be a blind rotation. Mr. Mason said that has never been imposed but rather that the Board sets up the list. Mr. Landis said that there needed to be a standard to create blind appointments. Mr. Landis moved to approve, Sen. Koch seconded. Motion passed unanimously.

Hancock County submitted an amendment to their assigned counsel system. The amendment was a rate change to increase pay. Rep. Dvorak moved to approve, and Sen. Bray seconded. Motion passed unanimously.

Fulton County also submitted an amended comprehensive plan. The Comprehensive plan has been in place since 1998. They have had an administrator the entire time, and that position has additional duties. They do not have an office, which by statute would require them to have a Chief Public Defender. They would like to clarify that the courts appoint the public defender and the administrator would assign those cases like a Chief Public Defender would. Until comprehensive reform is considered for Chief Public Defenders, he saw no reason that this change would not be approved. He recommended approval.

Mr. Dvorak asked who acts as the administrator now. Mr. Mason said that it is one of the lawyers, who receives additional compensation for this work; but it is not a full Chief position.

Mr. Bray moved to approve, Sen. Koch seconded. Motion passed unanimously.

5. Financial Status of Public Defense Fund

Mr. Mason noted the amounts listed in the materials. He said the Commission expenses will exceed the surplus in the fund. He noted that it was yet another record level of reimbursement.

6. Fiscal Year 2019 Budget

Mr. Mason noted that this is the second year that the Commission has approved an internal budget. He noted the project budget was smaller for operating expenses. He said that overall operating expenses were around three percent. He did note that additional staff may be necessary in the future.

He noted the large changes include a 2.1% cost of living adjustment effective July 1, 2018 for all Commission full-time employees. This was in line with judicial and executive branch. It includes keeping Andrew Cullen as the legislative liaison as the Commission looked towards finishing the report. This budget adds Kristin Casper to the staff as an additional legislative liaison. It also includes a possible contract extension for Kim Tandy to continue her technical assistance for the Task Force project.

Rep. Dvorak asked about staff goals as more staff is added to the Commission. Mr. Mason said that because of the absence of Chairman Rutherford the issue of staff goals will be addressed at the September meeting.

A motion to approve was made by Mr. Landis, with a second by Judge Diekhoff. Motion passed unanimously.

7. Biennium Budget

Mr. Mason noted the biennium budget was due in September. He has had meetings with all fiscal representatives. He has had meetings with all of the fiscal analysts from both parties from both Houses and had a meeting with the head of the budget agency to confirm how they would like the changes the staff anticipated coming down the pike for 2019. There was debate as to whether to introduce these changes as a separate bill or in the budget submission. The consensus was that it should be in the budget submission.

Mr. Mason noted that potential changes would be presented by the Task Force. Mr. Mason noted that the Commission has not approved these changes. He has been assured that he can amend his submission. Today, Mr. Mason asked whether the Commission would be amenable to that plan to submit the biennium budgets with what the Task Force may proposed with the expectation that it will be amended after proposed.

Rep. Dvorak asked about projections that may come from Task force work. He noted that recommendations for change could be a large increase. Mr. Mason agreed that full funding of any changes would require a phase-in period.

Mr. Mason noted that a model for projecting costs was created by Mr. Liddell and developed a cost-per-case so that it could be extrapolated to call counties. He did not want to use the costs of the county because it may not meet minimum Commission standards.

Mr. Mason said that he expected that a curb in unnecessary filings in CHINS/TPR cases may happen in the future.

Mr. Landis noted that these were contingency requests. However, the one that was not was the \$4 million dollar increase and was necessary to prevent pro-ration. Mr. Mason said that he has emphasized that fact. The first line-item on the budget would be to maintain the status quo and request the additional \$4 million.

Mr. Landis recommended that all requests be itemized. Mr. Mason noted that the Task Force hoped to finalize their report August 10 and the hope was to have a meeting with the Commission one week later.

Mr. Mason asked for a motion to present the biennium budget prepared in conjunction with Mr. Rutherford and Mr. Landis. Sen. Koch moved, and Rep. Dvorak seconded. Motion passed unanimously.

8. Capital Case

Mr. Mason recommended was to approving all the capital case reimbursement requested. Sen. Koch moved and Mr. Landis seconded. Motion passed unanimously.

INDIANA PUBLIC DEFENDER COMMISSION

Reimbursement Requests in Capital Cases June 13, 2018

COUNTY	DEFENDANT	TOTAL
Boone	Wright	\$27,228.59
Harrison	Schuler - Appeal	\$0.00
Lake	Vann	\$19,413.83
St. Joseph	Kubsch	\$41,218.16
TOTAL		\$87,860.58

9. 90-Day Letters

Mr. Mason noted that the Commission sent four 90-day letters to Clark, Decatur, Fayette and Shelby counties. He referenced more detail in the meeting materials.

Clark County compliance decreased from 6 to 9 attorneys out of compliance. He hoped that there would be a chief deputy public defender position in the June county council meeting but that is going to be considered now in July. That would seem to resolve the caseload problem. He noted that chief public defender Abe Navarro was present to discuss the issues.

Mr. Navarro addressed the Commission. He said that the 90-day letter did cause the public defender to be placed on the agenda for the county council. Rep. Dvorak asked whether Mr. Navarro thought the request would pass. Mr. Navarro noted that it at least was placed on the agenda.

Mr. Mason said that there were options. Mr. Navarro said that he has had success in the past.

Mr. Landis noted that the county has made a good faith effort. Mr. Navarro noted that the office did receive a grant to hire a social worker to help bolster the support staff to ensure full time adequate staffing.

Rep. Dvorak asked whether it would be possible to make a reimbursement now and will not allow any more reimbursements until compliance is achieved. Mr. Mason said that it is possible.

Mr. Hensel said he sensed the motion was to send a letter indicating that the Commission would suspend reimbursement unless compliance was achieved. Landis seconded. Motion passed unanimously.

Mr. Mason noted that in Decatur County, there was a proposal to hire two new deputy public defenders. But it would not be known until June 19 whether that request would be approved. Rep. Dvorak moved for such a motion, Sen. Koch seconded; motion passed unanimously for the same letter as Clark.

Mr. Mason said that Fayette had already approved funding to hire more staff to begin on July 1st. He said that it was their 4th quarter out of compliance and that they also had an increase in non-compliance. He said that it would be difficult to achieve compliance, and that they have gone in and out of compliance.

Mr. Mason stated that he would send another letter asking them to monitor the situation closely. No motion was taken on this matter.

Shelby County also hired an additional deputy public defender. He said that it was the county's third quarter out of compliance. He said they have hired a deputy to be hired July 1st. He recommended monitoring the situation but no 90-day letter. No motion was taken on this matter.

Rep. Dvorak asked Mr. Mason to send notes to Shelby and Fayette thanking them for their efforts to remedy the issues in their systems.

10. Compliance

Mr. Mason then reviewed the compliance history, starting with Carroll County. He said that the judge in that county responded and said that were willing to work with the Commission but struggled with finding qualified attorneys. He said staff was going to reach out to find ways to help the county come into compliance. Mr. Mason noted that Jefferson would be out of compliance because of changes in an attorney's contract. He said that it would take some time to even out.

Mr. Mason said that Jennings County would be in compliance next quarter. Mr. Mason noted that LaGrange County had the second quarter of non-compliance with an attorney. He is reaching out to the county to even out the caseload.

He said that Lawrence County is aware of their issue and that it would be resolved. Orange County has already addressed their issue and should be in compliance next quarter. Owen County should be in compliance next quarter as well.

Parke County were looking to hire more staff and lawyers, but they were taking the overages seriously. Mr. Mason noted Ripley County had not yet addressed their issue but they were willing to fix their issues.

Mr. Mason noted St. Joseph county had caseload issues and that they are aware of the problem but they are working on it.

Mr. Mason noted in Washington County, one attorney was substantially out of compliance, but he has heard from Elizabeth Castle Lane that the Board has voted to hire a Chief Public Defender to start January of 2019 and that these changes would likely resolve their caseload problems.

Mr. Mason recommended moving to approval of reimbursements. He noted it was yet another year of record reimbursement. He noted that Miami and Scott had re-joined the program.

Mr. Landis asked for an update of Brown County. Mr. Mason reported that the head of appellate division of Marion County had been appointed the President of their Board. The Judge was unaware of the issues. The county is now considering hiring a part-time chief. They have not submitted a request in over a year.

Mr. Landis asked to clarify; even at 6.6 million reimbursement, it might help to re-assure that there will be funds and no likely pro-rating in the next fiscal year. Mr. Mason agreed that was the case. There will be no likelihood of proration in the next fiscal year.

A motion to approve the reimbursements was made by Mr. Landis, and seconded by Mr. Bray. Motion passed unanimously.

INDIANA PUBLIC DEFENDER COMMISSION

First Quarter 2018 Requests for Reimbursements in Non-Capital Cases

6/13/2018

COUNTY	Late Factor	2018 Period Covered	Total Expenditure	Adjustment For Non-Reimbursements	% of Adjustment	Eligible Expenditure	40% Reimbursed
ADAMS	0.00	1/1-3/31	\$82,407.92	\$11,098.72	13%	\$71,309.20	\$28,523.68
ALLEN	0.00	1/1-3/31	\$1,313,124.68	\$63,972.35	5%	\$1,249,152.33	\$499,660.93

BENTON	0.0 0	1/1- 3/31			#DI V/0!	\$0.00	\$0.00
BLACKFOR D	0.0 0	1/1- 3/31	\$63,853.83	\$18,027.77	28 %	\$45,826.06	\$18,330.42
BROWN	0.0 0	1/1- 3/31			#DI V/0!	\$0.00	\$0.00
CARROLL	0.0 0	1/1- 3/31	\$88,645.80	\$20,076.57	23 %	\$68,569.23	\$27,427.69
CASS	0.0 0	1/1- 3/31	\$158,567.8 7	\$21,772.20	14 %	\$136,795.67	\$54,718.27
CLARK	0.0 0	1/1- 3/31	\$340,625.2 8	\$9,096.39	3%	\$331,528.89	\$132,611.56
CRAWFORD	0.0 0	1/1- 3/31			0%		
DECATUR	0.0 0	1/1- 3/31	\$77,431.42	\$10,210.74	13 %	\$67,220.68	\$26,888.27
DEKALB	0.0 0	1/1- 3/31	\$173,070.1 8	\$27,965.18	16 %	\$145,105.00	\$58,042.00
DELAWARE	0.0 0	1/1- 3/31	\$313,189.1 2	\$4,944.61	2%	\$308,244.51	\$123,297.80
FAYETTE	0.0 0	1/1- 3/31	\$82,439.71	\$7,988.21	10 %	\$74,451.50	\$29,780.60
FLOYD	0.0 0	1/1- 3/31	\$170,885.6 6	\$9,858.85	6%	\$161,026.81	\$64,410.72
FOUNTAIN	0.0 0	1/1- 3/31	\$17,267.42	\$2,756.37	16 %	\$14,511.05	\$5,804.42
FULTON	0.0 0	1/1- 3/31	\$92,020.51	\$25,384.97	28 %	\$66,635.54	\$26,654.22
GRANT	0.0 0	1/1- 3/31	\$283,490.4 5	\$5,885.61	2%	\$277,604.84	\$111,041.94
GREENE	0.0 0	1/1- 3/31	\$134,102.9 5	\$17,035.93	13 %	\$117,067.02	\$46,826.81
HANCOCK	0.0 0	1/1- 3/31	\$144,600.8 0	\$18,519.93	13 %	\$126,080.87	\$50,432.35
HENDRICKS	0.0 0	1/1- 3/31	\$492,370.5 9	\$83,753.26	17 %	\$408,617.33	\$163,446.93
HENRY	0.0 0	1/1- 3/31			0%		
HOWARD	0.0 0	1/1- 3/31	\$461,551.2 6	\$38,947.76	8%	\$422,603.50	\$169,041.40
JACKSON	0.0 0	1/1- 3/31	\$194,618.7 2	\$8,311.50	4%	\$186,307.22	\$74,522.89
JASPER	0.0 0	1/1- 3/31	\$35,470.70	\$10,366.90	29 %	\$25,103.80	\$10,041.52
JAY	0.0 0	1/1- 3/31	\$103,242.9 2	\$15,451.96	15 %	\$87,790.96	\$35,116.38
JEFFERSON	0.0 0	1/1- 3/31	\$188,869.2 1	\$25,550.29	14 %	\$163,318.92	\$72,927.24
JENNINGS	0.0 0	1/1- 3/31	\$93,456.15	\$13,817.06	15 %	\$79,639.09	\$31,855.64

KNOX	0.0 0	1/1- 3/31	\$212,092.5 7	\$34,738.16	16 %	\$177,354.41	\$70,941.76
KOSCIUSKO	0.0 0	1/1- 3/31	\$204,210.3 9	\$43,461.69	21 %	\$160,748.70	\$64,299.48
LAGRANGE	0.0 0	1/1- 3/31	\$36,818.62	\$4,445.29	12 %	\$32,373.33	\$12,949.33
LAKE	0.0 0	1/1- 3/31	\$1,145,096. 50	\$7,543.46	1%	\$1,137,553.0 4	\$455,021.22
LAPORTE	0.0 0	1/1- 3/31	\$208,945.0 0	\$19,902.05	10 %	\$189,042.95	\$75,617.18
LAWRENCE	0.0 0	1/1- 3/31	\$211,692.6 6	\$20,903.61	10 %	\$190,789.05	\$76,315.62
MADISON	0.0 0	1/1- 3/31	\$544,065.9 6	\$46,164.20	8%	\$497,901.76	\$199,160.70
MARION	0.0 0	1/1- 3/31	\$5,322,717. 90	\$446,765.11	8%	\$4,875,952.7 9	\$1,950,381.12
MARTIN	0.0 0	1/1- 3/31	\$94,468.43	\$16,554.53	18 %	\$77,913.90	\$31,165.56
MIAMI	0.0 0	1/1- 3/31	\$156,905.2 3	\$17,969.72	11 %	\$138,935.51	\$55,574.20
MONROE	0.0 0	1/1- 3/31	\$496,002.2 5	\$64,970.48	13 %	\$431,031.77	\$172,412.71
MONTGOMERY	0.0 0	1/1- 3/31			0%		
NEWTON	0.0 0	1/1- 3/31			0%		
NOBLE	0.0 0	1/1- 3/31	\$204,858.1 3	\$23,615.19	12 %	\$181,242.94	\$72,497.18
OHIO	0.0 0	1/1- 3/31	\$20,165.70	\$2,822.97	14 %	\$17,342.73	\$6,937.09
ORANGE	0.0 0	1/1- 3/31	\$165,908.1 1	\$22,530.73	14 %	\$143,377.38	\$57,350.95
OWEN	0.0 0	1/1- 3/31	\$77,000.68	\$12,298.83	16 %	\$64,701.85	\$25,880.74
PARKE	0.0 0	1/1- 3/31	\$37,123.58	\$9,425.16	25 %	\$27,698.42	\$11,079.37
PERRY	0.0 0	1/1- 3/31	\$41,228.26	\$8,892.37	22 %	\$32,335.89	\$12,934.36
PIKE	0.0 0	1/1- 3/31	\$43,750.24	\$5,071.75	12 %	\$38,678.49	\$15,471.40
PULASKI	0.0 0	1/1- 3/31	\$103,239.6 0	\$24,140.41	23 %	\$79,099.19	\$31,639.68
RIPLEY	0.0 0	1/1- 3/31	\$56,597.41	\$3,497.32	6%	\$53,100.09	\$21,240.04
RUSH	0.0 0	1/1- 3/31	\$112,760.1 3	\$15,720.00	14 %	\$97,040.13	\$38,816.05
SAINT JOSEPH	0.0 0	1/1- 3/31	\$662,240.6 8	\$67,903.18	10 %	\$594,337.50	\$237,735.00
SCOTT	0.0 0	1/1- 3/31	\$121,633.4 2	\$20,769.27	17 %	\$100,864.15	\$40,345.66

SHELBY	0.0 0	1/1- 3/31	\$154,919.8 7	\$19,122.74	12 %	\$135,797.13	\$54,318.85
SPENCER	0.0 0	1/1- 3/31	\$136,191.7 4	\$16,188.82	12 %	\$120,002.92	\$48,001.17
STEUBEN	0.0 0	1/1- 3/31	\$110,047.0 9	\$28,358.09	26 %	\$81,689.00	\$32,675.60
SULLIVAN	0.0 0	1/1- 3/31	\$79,700.22	\$25,413.35	32 %	\$54,286.87	\$21,714.75
SWITZERLAND	0.0 0	1/1- 3/31	\$32,361.79	\$5,276.09	16 %	\$27,085.70	\$10,834.28
TIPPECANOE	0.0 0	1/1- 3/31	\$1,007,766. 46	\$235,080.03	23 %	\$772,686.43	\$309,074.57
UNION	0.0 0	1/1- 3/31	\$17,491.50	\$1,071.43	6%	\$16,420.07	\$6,568.03
VANDERBURGH	0.0 0	1/1- 3/31	\$718,644.0 7	\$117,173.55	16 %	\$601,470.52	\$240,588.21
VERMILLION	0.0 0	1/1- 3/31	\$54,411.24	\$13,981.75	26 %	\$40,429.49	\$16,171.80
VIGO	0.0 0	1/1- 3/31	\$538,445.1 9	\$58,719.73	11 %	\$479,725.46	\$191,890.18
WABASH	0.0 0	1/1- 3/31	\$96,517.84	\$15,343.68	16 %	\$81,174.16	\$32,469.66
WARREN	0.0 0	1/1- 3/31	\$48,771.42	\$4,437.00	9%	\$44,334.42	\$17,733.77
WASHINGTON	0.0 0	1/1- 3/31	\$113,511.3 5	\$12,400.12	11 %	\$101,111.23	\$40,444.49
WELLS	0.0 0	1/1- 3/31			0%		
WHITE	0.0 0	1/1- 3/31			0%		
WHITLEY	0.0 0	1/1- 3/31			0%		
TOTAL			\$18,493,60 4.38	\$1,963,464.9 9		\$16,530,139. 39	\$6,619,655.43
Jefferson has \$7599.67 added from previous quarter omission; Allen has \$8,264 class action expenses removed							

11. Impact of Commission participation

Mr. Mason reviewed the impact of Commission participation on certain county metrics, including jail population. He noted the facts listed in the materials. Mr. Landis noted how the impact of early entry into cases in CHINS cases can lessen out of home placement times which saves money for the State.

12. Special meeting was set for presentation of Task Force Report

A special meeting of the Commission was set for August 22, 2018 from 2 p.m. – 4 p.m. Mr. Hensel asked that staff send out a notice. Rep. Dvorak clarified that the Commission would be expected to take action at that meeting. Mr. Mason said that the Commission would be asked to

vote on the budget priorities for the next biennium at the next meeting. Rep. Dvorak asked to invite the Chiefs to the August 22nd meeting and provide their input on the Commission priorities.

Mr. Mason noted re-election of the chair was to be set for the September meeting. Whoever the Chair is will be asked to present at the Budget meetings going forward. He also noted that the subcommittee on pay parity had met. The second meeting was set for July, with an ongoing process of sending pay parity questionnaires and reporting the results back to the subcommittee, who would then present recommendations back to the Commission in either September or December.

The meeting adjourned at 3:48 p.m.

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

August 22nd, 2018

309 West Washington Street, Suite 500

2:00 p.m.

Commission members present were: Sen. Eric Koch, Larry Landis, Rep. John Young, Hon. Steve Meyer, Richard Bray, Dave Hensel, Mark Rutherford. Staff present were: Derrick Mason, Torrin Liddell, and Kathleen Casey.

Present in the audience were: Andrew Cullen, Steve Owens, Jim Abbs, Bernice Corley, Michael Moore, Diane Black, Cody Eckert, Mark Carnell, Ann Sutton, Ray Casanova, Victoria Bailey, Amy Karozos. Special guest of the Commission was Hon. John Tinder, Chair of the Task Force.

1. Presentation by the Hon. John Tinder (Ret.), Chair of the Indiana Task Force on Public Defense

Chairman Rutherford thanked Judge Tinder for his work leading the Task Force. Judge Tinder thanked the Commission for listening to his presentation. He noted that his background was in the federal courts. He said that his great hope was to have the final Task Force report delivered by August 22nd, but that a little more work was needed. He said more polishing was necessary. However he was able to present the principle recommendations to the Commission today. He noted that the final report would be delivered to the Commission by September 1st.

Judge Tinder began with the central theme of the report, which was that the right to counsel was a fundamental right. From that right flow all of the other important constitutional rights that encompass public defense.

Judge Tinder reviewed the membership of the Task Force, which had a wide variety of backgrounds and all three branches of government; he noted that several of the Task Force members had public defender backgrounds. He thanked the public defender community for their participation. He noted that the public defenders wished to have a seat at the table, and noted that the Task Force had a special meeting with the Chiefs.

Judge Tinder thanked the staff of the Commission for their help in completing the Task Force process. He said that the Task Force was able to produce in 10 months what many groups would have taken two years to complete.

Judge Tinder noted the strong support for the report among the Task Force members. He said that even within the executive and judicial branches it is likely to be well received because of the amount of input.

He noted that there were 9 regular Task Force meetings as well as three subcommittees; five listening tour sessions as well a special meeting with the Chief Public Defenders and Public Defender Council. He noted that the Task Force conducted focus groups, a survey, and compiled

a number of documents that were compiled through special advisors which included Dean Lefstein as well as David Carroll. He believed the appendices will be a helpful resource.

Judge Tinder reviewed the findings of the Task Force, which included the following findings:

- More attorneys are needed.
- Misdemeanor caseloads are too high: Felony caseloads are too high.
- Attorney quality is not evaluated.
- Attorney training requirements are needed.
- Compensation is inadequate for public defenders
- Conflicts of interest are present.
- Investigators are needed.
- Interpreters and social workers are needed.
- Child welfare needs are rising.
- Counsel is required at initial hearings for all criminal and juvenile cases.
- Counties need more support.
- Uniform application of state standards is needed.

Judge Tinder noted that there were many judges and public defenders were doing the best they could with the best of intentions, given the resources that they had. However, the lack of uniformity of state standards was concerning to the Task Force.

Judge Tinder then reviewed the urgent priorities as identified by the Task Force. Those priorities were:

- The Commission should be authorized to reimburse misdemeanors. Judge Tinder noted that misdemeanors had been removed from the reimbursement, and while understandable that compromises are made in legislation, the absence of reimbursement for misdemeanors has caused a strain on the current system and created onerous caseloads. While of a lesser prison potential, the collateral consequences could be significant.
- The state should fund and manage a centralized state appellate office to provide direct services, oversight, and support (including directly contracting with attorneys or local offices that provide appellate services). Judge Tinder noted that access to appellate counsel was also not uniform across the state.
- Counties should be authorized to enter into agreements to create a multi-county public defense delivery system with a regional Chief. Judge Tinder noted that the historic development of public defense was on a county-by-county basis. However, the Task Force found that was not necessarily the optimal organizational structure for public defense going into the future.

Judge Tinder then reviewed the additional priorities for state reforms identified by the Task Force:

- The state should acknowledge a duty to provide effective and competent defense counsel for those who cannot afford representation. Judge Tinder noted that this would not have any additional cost to implement this reform. He also noted that prosecutions are brought in the name of the state, not the county.

- The state should guarantee that counsel is provided at all critical stages of the proceeding.
- The state should ensure every court that hears cases with a right to counsel meets Commission standards for quality.
- City & Town Courts with criminal jurisdiction require further study. Judge Tinder noted that because these courts are not monitored or part of the reimbursement system, they require further examination and should be brought into the system.
- Consolidation of functions in existing state public defender agencies should be considered. Judge Tinder noted economies of scale could come into play to reduce costs.
- Greater state oversight, funding, and technical support should be provided in specialty areas such as parental representation in CHINS/TPR cases, juvenile delinquency cases and civil commitments. Judge Tinder noted the difference that CHINS/TPR and civil commitments require a different type of representation and a different body of knowledge than traditional criminal law. The nature of the interests involved are different than criminal cases, as well as the pace, involvement of social workers, present dynamics that may not be a good fit for criminal public defenders.

Judge Tinder also reviewed the recommendations for reform at the county level:

- County public defender boards should have no more than one judicial appointment and have strengthened requirements for Board training and standards. Judge Tinder noted the importance of independence from the judiciary. He said that often, judges are called upon to find public defenders to work in their courtrooms. However, the Task Force found the role of the judges in the direct employment of public defenders posed a problem for the public defender and presented a potential limitation on the practice of the public defender. Judge Tinder noted the perception of impropriety was often the issue, not the intention of the judges who are trying to act in the best interest of their court.
- The county or multi-county defense plan should include appointment from the private bar.
- The Commission should study how to implement regional support of investigators and social workers and also consider pilot programs.
- Current Commission standards should be strengthened to ensure support staff are provided to attorneys. Adequate staffing increases the efficiency of the attorney's time and allows the client to benefit from the specialized work of paralegals, social workers, and investigators.

Judge Tinder referenced the recommendations for reforms to the Commission itself, which were addressed on his PowerPoint presentation:

- The Commission should regularly update its attorney workload standards.
- The Commission should track data on indigency appointments to ensure Commission standards are being followed.
- The Commission should explore remedies to help counties when they face funding shortages.
- The Commission should have the authority to administer discretionary grants to spur innovation.

- The Commission requires additional staff to develop new standards, coordinate with counties and/or regions, and implement data collection and quality controls.
- The Commission should consider changes to salary requirements to help retain public defenders.

Judge Tinder noted that the Task Force members were ready and willing to help support any of the initiatives that the Commission chooses to go forward with that arose from the Task Force project. He then reviewed the benefits that the Task Force found from a stronger public defense system, which were referenced in the PowerPoint presentation:

- Fairer Administration of Justice
- Reduction in Jail Overcrowding
- Reformation of Individuals/Recidivism Reduction
- Workforce Development
- Family Preservation
- Reduced costs to State Prison System

Judge Tinder said that he would be available to answer questions both today as well as after the final publication of the Task Force report.

Chairman Rutherford asked the Commission members if they had any questions.

Senator Taylor asked whether the Task Force looked at the fiscal impact of these recommendations. Judge Tinder said yes, the Task Force had considered the fiscal impact using the same analysis that the Commission would. However, Judge Tinder noted that the Task Force focused on need rather than finding the solution with the least cost.

Chairman Rutherford noted that Derrick Mason had been working on cost projections and could answer questions.

Senator Taylor noted that the shifting of responsibility from local counties to the state was very compelling. He noted that the state constitution states the right to counsel exists in both misdemeanors as well as felonies. Judge Tinder agreed that there is a right to counsel for both felony and misdemeanors. Senator Taylor asked how misdemeanors were removed from the state's responsibility.

Mr. Landis reviewed that misdemeanors were removed from reimbursement when the amount of reimbursement was raised from twenty-five percent to forty percent. Mr. Landis reviewed that it was a compromise made by Senator Bray in order to raise the overall amount of reimbursement. He said that there was an intention at that time to review the misdemeanor exclusion and bring them back into reimbursement. Mr. Bray agreed that was accurate.

Chairman Rutherford noted that Judge Diekhoff had joined by phone.

Mr. Hensel asked what the next step was for the Commission. Mr. Mason said that the anticipation was that the report was going to be finalized on August 30th. He said the goal was then to ask for permission to release the report online, request written commentary, as well as come away from the present meeting with a tentative legislative agenda.

Mr. Mason reported that the initial budget had been submitted, and that requests could be turned “on and off” depending on what priorities the Commission wished to set. He said that in September the Commission would formally receive the report and accept any other comments.

Mr. Mason reported that the Reporting Committee of the Task Force had voted to approve the report’s recommendations.

Judge Hanlon spoke next. She said that, with respect to regionalization, geography could come into play and asked for Judge Tinder to comment more on this concept.

Judge Tinder said that rather than suggest a top-down imposition of regionalization, the Task Force thought that counties might decide among themselves where it fits best. He said that it was not uncommon for the bars in certain counties to overlap in certain areas. He said that the courts have devised a regional system. He did not state whether that was the correct format or not, but noted its existence. He also noted that pilot projects might be a way to test this idea.

Judge Meyer asked about the recommendation for a state appellate office. He said that it was an interesting idea and asked for insight on this issue. Judge Tinder responded that the Task Force acknowledged that Lake and Marion counties have a robust internal appeals department. However, for the most part, county PD offices aren’t able to specialize in smaller counties. The Task Force found that some appellate practitioners will contract with various counties, so the model is already in existence in some sense, though more organization would be necessary.

Judge Tinder said the Task Force wanted to encourage what was working in Lake and Marion while also ensuring more uniformity in areas where there currently is less access to qualified appellate lawyers.

Mr. Hensel stated that the state appellate office did not flow from the other deficiencies identified because it was not a trial court issue, though it made sense to him. He asked about consolidation of existing state agencies.

Judge Tinder responded that the historical development of the State Public Defender was a response to adverse cases out of federal courts in some ways. He said the Supreme Court created that office to remedy the issue with federal habeas cases. However, the Task Force saw some economies of scale that might benefit the state. He also noted the importance of independence and noted that the Indiana Supreme Court chooses the State Public defender and that this issue figured into the Task Force members thoughts. He noted that would be a sea change.

Larry Landis said he would like to personally thank Judge Tinder for his service after the death of Judge McKinney. He said that the work completed by the Task Force had been enormous. Judge Tinder said it was his privilege and that the members had devoted countless hours, including nights and weekends to travel to listening tours around the state.

Chairman Rutherford then asked for public comment.

Chief Public Defender James Abbs then spoke. He thanked the Task Force for the work they had done and thanked Judge Tinder. He said that the public defenders throughout the state feel their voices were heard. He said that the Chiefs and the Council supported the recommendations, but

felt there was a glaring issue with the recommendations. He felt that mandatory compliance with Commission counties statewide is the most important issue facing the state.

Judge Tinder said that uniform compliance with standards would be ideal. He did not know why counties would not want to participate in the Commission program. He noted the emergence of electronic filing which will be of great assistance to the counties and will ease reporting requirements. He said that he would support a uniform system, but said that there was pushback on the issue of mandatory compliance. He noted the pride of counties in creating the best system that they were able to create with the best of intentions.

Mr. Mason noted that the Task Force did recommend mandatory compliance. Judge Tinder said that the Task Force would like to see mandatory compliance happen.

Sen. Taylor then observed that the standards, if implemented as a statutory provision, would provide an additional incentive for counties to come on board. He observed that at the moment the standards were voluntary. He said at some point there has to be an acknowledgement that the reality is society values prosecution more than public defense. He noted the benefits provided to prosecutors under state law that are not provided to public defense. He said that if lawmakers took the initiative to make it mandatory, it would ensure the constitutional rights guaranteed to citizens. He noted the cost savings from effective public defense and the return on investment over time from improving public defense services.

Judge Tinder said that the Task Force found that jail overcrowding is reduced in Commission counties and recidivism rates are lower in participating counties. He noted that CHINS/TPR cases, while not a neat fit with criminal defense, are affecting the lives of people not ordinarily brought into the criminal justice system. Judge Tinder noted the litigation that had already occurred in regard to public defense and the potential for further litigation in the future in addition to the benefit to the state in pre-empting this litigation and resolving the issues before litigation occurs. He referenced the lawsuits over jail conditions as an example.

Judge Hanlon asked whether the Task Force considered a phase-in process for standards. She noted the double-edged sword of keeping counties in the program but also ensuring compliance with standards. Judge Tinder said the concept was discussed and referenced how pilot projects could demonstrate results before a full state rollout.

Mr. Abbs discussed the success that he has had in his county and the ability to negotiate with the local entities to receive more funding to meet Commission standards. He does not believe that compliance should be imposed overnight, but proposed instead a six-year phase-in process. He said it took Noble County five years to gather support to join the Commission program. He acknowledged the difficulty that will be part of the process.

Judge Hanlon pointed out that county councils will often be concerned about the cost of providing indigent defendants with counsel.

Mr. Landis said that mandatory compliance was a recommendation both by the Public Defender Council and the Chief's Association. He noted that it was an unfunded mandate, however. He

reported that during the Task Force this issue was debated, and the idea was to increase the size of the incentive to encourage more counties to join.

Mr. Steve Owens spoke next. He explained the process of his office in representing clients with post-conviction and appellate issues. He said that his office prefers to be separate from the other entities. He believed that there was an inherent conflict should the State Public Defender be combined with a proposed state appellate office or any other public defender entity.

His concern with a combination is that it could create more problems and inherent conflicts. He acknowledged the issue of his appointment by the Supreme Court. He has his own separate budget. He is very concerned about discussions of an appellate office within the State Public Defender or any discussion of combination of offices.

Judge Tinder stated that the Task Force did not want to create any reform that would create a conflict. He noted that the Supreme Court may not wish to give up supervision and the Court had not been asked whether they would like to give up that responsibility. He said whatever consolidation should not create a conflict and the exact configuration was not decided by the Task Force.

Chairman Rutherford thanked the Judge for his presentation and discussion moved to Commission priorities.

2. Commission's action on a tentative legislative agenda

Mr. Mason stated that he was not requesting a vote but was asking for direction from the Commission. He explained the actions that would be taken by the staff to publicize the tentative agenda and solicit feedback from the public. He asked for permission to release the report online and solicit written comment on a tentative legislation agenda to be finalized at the September 19th meeting.

Chairman Rutherford asked whether the Commission had any objections to the proposal from Mr. Mason. No objection was heard.

3. Tentative Legislative Agenda Items

Mr. Mason referred to the fiscal estimates provided for proposed reforms. He also noted the staff priorities in the materials. Additionally he noted that the Public Defender Council had provided their recommendations to the Commission and that it was included in the materials.

Mr. Mason then referenced the staff priorities. He said that staff have initial data that demonstrates that implementing Commission standards in the non-participating counties would save the Department of Corrections 44.7 million dollars a year. He said that this initial estimate was not included in the materials but was an example of the data that was being developed by Commission staff.

a. Base budget

Mr. Mason explained first the base budget need for the Commission. He said that the Commission will spend approximately \$28 million in the next biennium in reimbursements. He

said that is an approximately 4.4 million dollar increase. Mr. Mason explained that an increase in participation and need are driving this increase. He said that even more counties are looking to join including large counties such as Elkhart County.

Mr. Mason explained that this request is the “bare bones” to continue the Commission with its current standards. He said all of these projections are contingent on a number of factors.

Mr. Mason requested approval to seek the approximately \$30,225,000 total budget as listed in the materials.

Mr. Landis moved to approve the budget request, and Mr. Hensel seconded. Motion passed unanimously.

Mr. Landis explained that the Commission’s fund is a non-reverting account. He explained that if there was not enough in the fund, then counties are pro-rated. Chairman Rutherford noted the difficulty for counties who had been prorated in the past.

b. Reimbursement of all case types

Mr. Mason then presented the next item, which was for reimbursement of misdemeanors, which was also noted as “all case types” in the materials. He said it would cost approximately 4.65 million dollars to reimburse current participating counties for misdemeanors.

Mr. Mason said that because the Task Force said all case types should be reimbursed, he also included \$881,592 for reimbursing non-reimbursable other case types. He noted that statutorily the Commission is allow to reimburse those case types, which include contempt, involuntary termination of parental rights via adoption and extradition cases. The total amount asked would be 5.7 million dollars per year to reimburse current participating counties for all case types, and he requested permission for this.

Mr. Mason clarified that this reimbursement would not be paid immediately and that a phase-in period may be required. It would be up to the Commission to determine how to reimburse and on what timeline.

Mr. Mason also noted that if caseload standards change, it could affect the financial projections.

Judge Meyer said that he is supportive of this initiative, but he looked at the expected county expenditures and asked whether the staff have reached out to county officials to determine whether they support this initiative. Mr. Mason said that many council officials are supportive of reimbursing misdemeanors as well as the Association of Indiana Counties.

Mr. Mason said that the Association of Indiana Cities and Towns (now called Accelerating Indiana’s Municipalities) has historically been supportive of reimbursing misdemeanors.

Mr. Bray asked about priorities and Mr. Mason referenced the staff priority list, which listed maintenance of current standards first, followed by reimbursement of misdemeanors. Mr. Bray noted the importance of incremental change to ensure forward progress.

Chairman Rutherford clarified that the second motion would be to allow staff to pursue reimbursement of misdemeanors as a second priority. Rep. Dvorak moved, and Rep. Young seconded the motion which passed unanimously.

c. Statewide appellate office and juvenile defense team

Mr. Mason then introduced the third priority, which was a statewide appellate office, with a juvenile defense team. He noted that one of the findings of the Task Force was that juvenile and CHINS/TPR are practice areas that require specialized representation.

Mr. Mason said that the estimated costs are based on conversations with current appellate practitioners as well as the Task Force appellate subcommittee. He said that this financial projection over-estimates the number of appeals to ensure adequate capacity to represent clients. He said that the total amount came up to \$5.6 million dollars. He said that overall, it saves \$2.7 million in tax dollars, and after reimbursement is no longer being provided to the counties, it would be an additional \$1-1.5 million dollars off the Commission reimbursement budget. He said that one contingency is that counties would be required to pay for pauper transcripts.

Mr. Mason said that the recommendation from the Task Force report is to have the appellate office housed within the Commission.

He said that the proposed change would amend Indiana Code § 33-40-5 to create a state appellate office. He also said that the plan would allow for counties with current appellate projects to keep their in-house appellate offices.

Chairman Rutherford clarified that this proposal would not encompass post-conviction relief.

Mr. Mason also clarified that not all state appellate lawyers would be required to work in Indianapolis. He also clarified why juvenile defense representation was needed and why having a subset of lawyers able to provide technical assistance and representation within the office was part of the proposal.

Mr. Mason noted that both the Council and Commission were requesting funding for the juvenile project at the same time, and that the project would go to one or the other. The Commission proposal would allow for direct representation. He noted that the cost was approximately \$371,000.

Chairman Rutherford asked for a motion for the state appellate office and juvenile delinquency as one package, which were figure 3 and figure 4 in the included materials. Mr. Hensel moved to approve, and Judge Hanlon seconded. Motion passed unanimously.

d. Regionalization

Mr. Mason said that there were two more priorities, which were centered on the concept of regionalization. Specifically, proposals 1(d) and (e) and 2(a) and (b) in the referenced materials.

Mr. Mason said that he has already encouraged counties to regionalize, though he has never been successful. He believes that it is possible under statute, but that changing the statute I.C. § 33-40-

7 to create multi-county public defender offices would make it explicit. It would allow for multi-county chiefs as well as support staff for those offices.

Mr. Mason noted that the concept that needed discussion by the Commission was whether these regional chiefs should be employees of the Commission or whether they would be paid for by a MOU between the counties. The Task Force report recommended that the chiefs be employees of the Commission, Mr. Mason noted.

Mr. Mason said that he does not believe that the Commission can currently hire chiefs to support a multi-county region, though counties could engage in a MOU for such an arrangement.

Mr. Mason asked for two issues (1) should the chiefs be Commission-paid, and (2) should support centers be paid for by the Commission and make their staff Commission employees.

Mr. Landis clarified that when the Task Force looked at the systemic deficiencies, one glaring issue was the lack of accountability within the county for the quality of public defense services. By having a chain-of-command from the Commission to the chiefs, it would be possible for intervention other than simply withholding money, which has been identified as an inadequate remedy. He said that withholding reimbursement was often a delayed remedy that sometimes could take several quarters before any action is taken.

Mr. Landis noted that the Task Force identified the benefits of a state system, but also balanced that against the fact that Indiana is a “home rule” state. The idea of state-paid chiefs was to balance the benefits that come from direct oversight while respecting Indiana’s delegation of the provision of public defense services to the counties.

Judge Hanlon asked who the regional chief would work for if not the Commission. Mr. Mason said that it is likely the chief would work for a regional board.

Mr. Abbs said that he did not have an issue with the regional chief, but he said that there would be a concern from smaller counties about state oversight and control, and from the larger counties in being forced to pay for a chief while smaller counties received a chief for free or reduced cost.

Judge Hanlon said that she liked the idea of having a regional board. She noted that there were no attorneys on her public defender board because the attorneys that are in her county are currently practicing and therefore prohibited from sitting on the board. Mr. Mason said that this was not unusual in small counties.

Mr. Landis said that one of the issues that the Task Force heard was that public defender boards are ineffective in oversight of public defenders in their counties. He said that it was a systemic problem. He said it would be best to begin by reimbursing counties for the chiefs rather than having these positions be paid by the state up front.

Chairman Rutherford asked whether any members were prepared to make a motion.

Mr. Mason noted that there was a budget item listed that would project costs for a maximum of fourteen regional chief public defenders. He also noted that another priority requested by the staff would be to allow support staff to be paid by the Commission.

Judge Meyer said he would like to see the counties attempt to regionalize themselves before taking Commission action.

Mr. Landis asked whether the Commission would be comfortable seeking permission to hire regional chiefs for the Commission, but only upon recommendation of a regional board. Mr. Mason clarified whether they would be employees by the Commission. Mr. Landis said that they would be employed by the Commission but paid for by withholding from reimbursement the cost of paying for that position.

Mr. Landis noted the intense pressure on Chiefs to reduce costs within the county while being employed by the county. He said the intent was to create a buffer so that the person is not so vulnerable to the pressure of county councils.

Mr. Hensel stated that a pooling of resources is a good idea. He said to Mr. Landis that the right to hire or fire chiefs was a separate issue from regionalization. He said that he was comfortable with regionalization but not that the Commission would employ chiefs.

Mr. Mason said that currently there were no standards for Chief Public Defender performance. He proposed taking more time to consider this issue and potentially add it to the September agenda. He proposed allowing counties to move forward with regional chiefs and regionalization.

Sen. Taylor asked for a scenario in which regionalization has worked and expressed concern about the concept. Mr. Mason said that the concept of regionalization would indeed be a challenge.

Chairman Rutherford asked for a motion on regionalization generally, to approve priority concerning multi-county regionalization but not dealing with employment of chiefs generally. Motion was made by Mr. Hensel, and seconded by Rep. Dvorak. Motion passed unanimously.

Chairman Rutherford asked that the employment issue be placed on the agenda for September.

Mr. Mason then proposed that all items except item 2(c) be moved to September for a final vote, and that in the interim staff would seek opportunities to discuss or pursue these goals should they arise.

e. Public defender board structure

Mr. Mason then moved to discuss proposal 2(c), which did not implicate the larger counties nor the counties with a population under 12,000. He outlined that the problem with the Boards as currently structured do not have sufficient independence from the judiciary because 2 of the 3 members are appointed by the judges.

Mr. Mason said that the Task Force recommended that no more than one appointment be by the judiciary, or at least not a majority. The Task Force report recommended that one appointment

be transferred to the Commission. It would still be a local appointment and would allow the Commission to have a better idea of the operation of the Board and ensure quality appointments.

If appointment authority is transferred to the Commission, the compromise proposed by the Indiana Association of Counties would be to allow the local public defender board to be expanded beyond its three members while limiting it to only one judicial appointment, although it could also be said that the judges would have a non-majority.

Judge Hanlon clarified whether the appointment would be to the county executive. Mr. Mason stated that the third appointment would not be put in the county executive because of the inherent conflict related to funding.

Judge Hanlon said that the issue will be how the Commission will identify proper persons to be appointed to the Board. Mr. Landis said that the best practice would be for the counties to recommend to the Commission a list of potential appointments.

Chairman Rutherford referenced how people are appointed to the Public Defender Commission.

Mr. Landis said that should the Commission make an appointment it would be possible to do training to ensure that the board functions well. He said at the moment there is little ability for the Commission to conduct any oversight of board function.

Judge Hanlon said that it can often be an issue that board members appointed by the judges may place an undue reliance on the judge's position. Judge Meyer agreed that it made sense to limit to one judicial appointment.

Chairman Rutherford asked for any other comments. Mr. Abbs stated he understood the concern with judicial appointments. While not speaking for Noble County, he would be concerned with undue influence from the county commissioners. He said that many counties do not have bar associations, and was overall concerned with giving any group too much power.

Mr. Landis made a motion that the composition of the county boards be one appointment by the county judges, one by the county commissioners and one by the Public Defender Commission, with the opportunity for expansion. After a second, the motion passed unanimously.

Before concluding the meeting, Chairman Rutherford congratulated Judge Diekhoff and Judge Hanlon for being re-appointed to the Commission for another four years.

**INDIANA PUBLIC DEFENDER COMMISSION
MINUTES
DATE OF MEETING: September 19, 2018 @ 2 PM
LOCATION: 309 W Washington St. 5th Floor,
Indianapolis, IN 46204**

The meeting was called to order at approximately 2 p.m. Commission members present were: Sen. Eric Koch, Hon. Kelsey Hanlon, Rep. John Young, Larry Landis, David Hensel, Chair Mark Rutherford. Staff present were: Derrick Mason, Kathleen Casey, Torrin Liddell, Jennifer Pinkston, Andrew Cullen

Present in the audience were: Neil Weisman, David Carroll, Bob Hill, Bernice Corley, Jim Abbs, Gretchen Etling, Abraham Navarro, Jennifer Meyer, Steve Owens, James Oleans, Jeremy Gooch, Michael Moore, Cody Eckhart, Alan Marshall, Marce Gonzalez, Mark Carnell, Josh Stigdon.

1. Approval of Minutes:
a. June 13, 2018 Meeting

A motion to approve the minutes was made by Mr. Hensel, seconded by Mr. Landis. Motion passed unanimously. Hon. Hanlon and Rep. Young abstained as they were not present at the June 13 meeting.

b. August 22, 2018 Meeting

Motion to approve the minutes was made by Sen Koch, and Rep Young seconded; motion passed unanimously.

2. Approval of Jay County Amended Comprehensive Plan

Mr. Mason introduced the updated Jay County Comprehensive plan. They will continue to maintain a part-time chief public defender, but clarified the chief's duties. They will conduct an annual review of compensation. Mr. Mason recommended approval. Hon. Hanlon moved to approve the Jay County Amended Comprehensive plan, which was seconded by Mr. Hensel. The motion passed unanimously.

3. Election of Chairman

Mr. Rutherford asked Mr. Hensel to conduct the election of the chair. The Commission elects its own Chairperson per I.C. 33-40-7-3(d) and has been doing so every two years. Mark Rutherford's term had expired and the issue was brought before the Commission for consideration of this position and creation of a Vice Chairman position.

Mr. Hensel opened the floor for nominations. Mr. Landis nominated Mr. Rutherford for a term of another two years. Mr. Rutherford accepted the nomination. Sen. Koch moved that nominations

be closed and that Mr. Rutherford be re-elected by unanimous acclamation. Hon. Hanlon seconded the nomination. Motion passed unanimously.

At this point Chair Rutherford resumed chairing the meeting.

a. Creation of Vice Chairman Position and Election

Mr. Rutherford explained that with the intensive goals during this fiscal year, it was suggested that a Vice Chairperson position be created. Mr. Rutherford noted that there had been an increase in activity of the Commission and the need for another chair position to ensure appropriate oversight of the staff. He asked for nominations for this position from the Commission members. Rep. Young moved to nominate Larry Landis, and Mr. Hensel seconded this motion. The motion passed unanimously.

4. Finalization of Legislative Agenda, Messaging, & Authority to Proceed

Mr. Mason reviewed the authority to proceed with the Commission's legislative agenda. He noted that staff will continue to work with Mr. Landis throughout the legislative season. Mr. Rutherford added that with the legislative agenda which would be fairly aggressive in that there were changes proposed. Mr. Rutherford said his role as chair of the Commission was to be the ultimate decision maker in whom responsibility resides. He did not want staff to have to make decisions should ultimately will rest with him.

Mr. Rutherford asked for the authority for himself and the Vice-Chair to make decisions that will become necessary throughout the legislative process when a full meeting of the Commission would not be possible. He asked for authority to make decisions that help to fulfill the goals of the Task Force and the priorities adopted by the Commission. Things may need to be tweaked and staff should not be required to make that call. Mr. Rutherford clarified that these decisions would not be whole-cloth changes, but rather actions that help fulfill the Commission's stated priorities.

Hon. Hanlon asked whether a motion was necessary. Mr. Mason said that he did not think a motion was necessary but did wish to know whether any of the Commission members had an objection to the proposed plan.

Mr. Mason then reviewed the legislative priorities as recommended by staff for finalization as they were approved in the tentative legislative agenda:

- A. Base Budget
- B. Reimbursement for All Case Types
- C. Statewide Appellate Office & Juvenile Defense Team
- D. Allow Counties to form Regions under the Commission's Reimbursement System

Mr. Mason then reviewed the legislative options that should the Commission see the opportunity to arise during the session but they are not "priorities:"

- E. Authorization & Funding for TPR/CHINS Pilot Project
- F. Discretionary Grants/Awards
- G. Regional Support Services Pilot Project
- H. Mandatory Participation
- I. Regional Chief Public Defenders

- 1. Should they be direct hires of the Commission

2. Should they be hired by the Commission with state benefits but the counties pay for them less reimbursement
3. Should the Commission have final approval, or hire/fire authority
4. Require regional chiefs but leave the issue completely to regional boards

Mr. Mason noted that the base budget alone would have a fiscal impact of approximately 4.5 million dollars to maintain current operations. Mr. Mason noted that legislative agenda items A-D were immediate priorities.

Mr. Mason noted that agenda items E-H were additional options that arose as a part of the Task Force process. Mr. Mason noted that agenda item I was held over from last meeting. He noted that the main public comments were that prioritization was necessary and that reimbursement for misdemeanors was the most important, followed by a statewide appellate office, with a third priority of allowing for regionalization.

Mr. Mason noted that the Commission approved at the previous meeting a legislative proposal to remove a judicial appointment from the Public Defender Boards and the substitution of a local appointment appointed by the Public Defender Commission.

Mr. Mason noted that there were concerns about the creation of a state appellate office and that staff had proposed the creation of an informal working group to provide input on how to construct this office. Mr. Mason noted that the concept of a statewide appellate office seemed to generally be approved.

Mr. Mason said that he did not have a recommendation on whether prioritization was necessary, though noted that misdemeanors would be the number one priority after, followed by a state appellate office, and the regionalization proposal as well as the state public defender board reorganization after that.

Mr. Rutherford noted that Mr. Landis provided written comments and that staff had included a proposed news release. He also noted a memorandum provided by Bernice Corley and David Carroll. He also noted that there was a letter from the National Alliance of Mental Illness as well as an open letter from public defenders working at the Marion County Public Defender Agency. Mr. Rutherford thanked the stakeholders for their input.

Mr. Rutherford asked if there was a preference on how to proceed. Mr. Landis proposed that the priorities be listed as they were listed in the materials A-D, with the base budget being the top priority.

Mr. Hensel asked a question about the statewide appellate office, he asked for clarification. Mr. Mason said that the Commission had approved at the prior meeting the concept of a statewide appellate office that would be able to contract back with other systems, encourage in-house counsel that can help a public defense office with more than just the appeal. He said that there had been additional comment about how that concept would be fleshed out. He said that there were various concerns to be fleshed out and that a working group would be formed.

Mr. Rutherford asked whether a report would be ready by December, and Mr. Mason said that there would be. Mr. Landis added that the counties that are currently housing an appellate division be allowed to have their systems remain. He said that the focus of the appellate office would be the forty to fifty lawyers where judges are not appointing appellate counsel.

Rep. Young asked whether this concept would be provided to non-participating Commission counties. Mr. Mason said that the concept had been discussed but that it was something for the working group to consider.

Mr. Abbs then addressed the Commission. He said that the Chiefs had a meeting and he said that he wanted to add that the Chiefs agree that the reimbursement for misdemeanors, appellate office, and regionalization were generally agreed to by the Chiefs. He noted that Lake, Marion, and Tippecanoe Counties wished to be exempted from any statewide appellate office. He wanted assurances that their systems would not be affected. He also said that he wanted statewide mandatory participation in the Commission.

Ms. Corley then addressed the Commission. She emphasized the importance of the priorities in order with misdemeanors as the first priority. Mr. Rutherford responded that the base budget would be the first priority followed by all case types.

Mr. Landis noted that the Council and the Chiefs agreed with these priorities.

Mr. Gonzalez then addressed the Commission. He emphasized the importance that the legislature exempt Lake and Marion counties because of the exceptional work that their appellate divisions are doing for the state. He said that he does believe that a statewide office is necessary for many counties, but that he would like to see language that allowed Lake and Marion to continue the work that they are doing.

Mr. Hill addressed the Commission. He said that in-house appellate counsel was a great benefit to his clients. He emphasized that the first and foremost priority should be misdemeanors. He said that was the biggest need in the state. He said that misdemeanors should be a standalone and first recommendation, and that it was his belief that the Public Defender Council and Chiefs would pursue this goal. He said that his concern with the state appellate office was in the details. He believed the fiscal projections were too low for the state appellate office. He said his fear was that the lack of planning on the appellate proposal will defeat the misdemeanor proposal. He believes that this fear was also held by the Council and the Chief's association.

Mr. Landis moved that the priorities be listed A-D as listed in the material, in the order listed. Hon. Hanlon seconded. Motion passed unanimously.

Mr. Hensel asked whether the details of the state appellate office would be worked out by the December meeting. Mr. Mason said that ideally that would be worked out by then.

Mr. Landis noted that there would be a workgroup proposed for the regionalization concept as well. He said that hopefully by December there would be a more detailed proposal.

Mr. Hensel asked whether regionalization would have a fiscal impact. Mr. Landis said no, it would authorize counties to form multi-county regions, and that there would be no mandate.

Mr. Mason asked whether the Commission wanted to address section I, the regional chief proposal, and whether the Commission wished to pursue legislative items E-H.

Mr. Rutherford said there was a motion to support the top four initiatives A-D. Hon. Hanlon asked whether the proposal to alter the composition of the Public Defender Boards should be included.

Hon. Hanlon suggested that there be an amendment to include that proposal. Mr. Landis accepted that amendment which specifically to include the proposal to re-adjust the statutory public defender appointments to take away one judicial appointment and instead include one Commission appointment.

Mr. Hill asked a clarifying question as to whether this ranks the priorities. Mr. Rutherford said that after base budget it was the first priority was to reimburse all case types.

A vote was held, and motion passed unanimously.

Mr. Mason then reviewed the priorities E-H which he requested general approval which the Commission would like to see generally should an opportunity arise.

- E. Authorization & Funding for TPR/CHINS Pilot Project
- F. Discretionary Distributions to Counties
- G. Authorization & Funding for Criminal Support Staff Pilot Project
- H. Statewide (Mandatory) Participation

Rep. Young asked for clarification on proposal E. Mr. Mason said that he spoke to the Department of Child Services, and helped educate them that adequately trained lawyers with social work support can result in return of children to the home sooner and benefits to families and the counties overall. The concept would be a pilot project to create regions where we would handle half of the families to a pilot group, and the other would be the control group to determine if increased resources resulted in better outcomes. Hon. Hanlon said that having more counsel would lead to better outcomes.

Mr. Rutherford asked for motions on E-G. Mr. Mason requested that the motion take the form that the legislative proposals E-G are authorized by the Commission to pursue but are not a priority. Mr. Landis moved and Mr. Hensel seconded. Motion passed unanimously.

Mr. Mason then discussed proposal H. Mr. Mason explained the history of mandatory participation and that it had been a recommendation from the Sixth Amendment Center. Mr. Mason said that this was a goal but not an immediate priority. He noted that this proposal was also supported by Mr. Abbs. Mr. Landis noted that the Commission had never taken a position that there should be no exemptions, and that every court should comply with state standards. He said that was a principle that should be embraced even if it is not pursued this legislative biennium.

Mr. Carroll addressed the Commission. He thanked the Commission. He noted that this principle was the crux of the report of the Sixth Amendment Center report. He said that the current system is legitimizing and institutionalizing the choice not to meet the parameters of the Sixth Amendment. He said that all the messaging should be around this principle. He said that if there is one piece that could help define that, it's that the state, at the very minimum, under the fourteenth amendment, must know what's going on. He suggested a priority to require those counties to collect data, even if they are not participating.

Mr. Mason suggested that staff could look at an amendment to the Supreme Court rules that would require more data collection.

Mr. Landis reviewed that the Task Force had rejected the idea of a statewide system by key stakeholders. There was concern that any legislative reforms would be rejected if statewide compliance was pursued. He said a gradual approach, adding more counties as they find the Commission valuable, could reduce opposition to statewide compliance in the future. He said that statewide compliance should be the goal.

Rep. Young suggested the idea that the issue of statewide compliance could be an issue for the summer study committee. Mr. Mason said that staff would develop suggestions on how to better collect data from non-Commission counties.

Mr. Landis made a motion to state that it is the opinion of the Commission that the State is responsible for ensuring that the right to counsel is provided to all persons entitled to counsel at public expense in all courts in Indiana. After a second, the motion passed unanimously.

Mr. Rutherford then moved to discussion of item I. Mr. Mason reviewed that this item was discussed at the last meeting. Mr. Landis hoped that a working group of the Chiefs that could help outline this issue. He said his concern was that a person should be responsible for the

quality of public defense in every county. He did not feel that the Commission was ready at this time to move on this issue.

Mr. Abbs noted that the Chief's Association had a working group working to create a job description. Mr. Rutherford said that it seemed that there was more work yet to be done.

No action was taken on this item.

Mr. Mason asked for approval of the press release that was included in the materials. He wanted to ensure that there were no specific objections to the language included in the press release or calling the reform effort the Justice Improvement Initiative. No objections were heard.

5. Vanderburgh County: CHINS/TPR Non-Compliance

The Commission again heard from Vanderburgh County regarding the ongoing carve-out for CHINS/TPR noncompliance. At the June meeting the county had asked for six months to come up with a plan for the issue. Instead, the Commission requested that they provide an answer at the September meeting.

Mr. Owens reported that after the receipt of the 90-day letter the county council approved a line item adding \$300,000 to the budget for the purpose of hiring additional lawyers and increasing the salaries for those attorneys handling CHINS/TPR work. He said that he and his board will hire additional staff that should allow attorneys to come into compliance. He noted that compliance would take several quarters and would take until the first quarter of 2020 to have full compliance.

Mr. Owens noted that adoptions are not reimbursed by the Commission. He said that those cases will be contracted out on an individual basis to assigned counsel and that CHINS/TPR lawyers will not be handling adoption cases.

Mr. Mason recommended that the Commission approve the reimbursements going forward assuming that the new plan takes place on January 1st. He noted that hiring lawyers will take time and that it was reasonable that resolution would require time.

Mr. Owens noted that Vanderburgh County had a robust public defender fund and that even if salaried attorneys cannot be retained by the end of the year, it would be possible to hire hourly attorneys to take the overages. The Commission congratulated Mr. Owens on his work to remedy the issue.

6. Flat Fee Per Case (Marion) & Flat Fee Per Court Hearing (Various)

As part of the staff's ongoing efforts to confirm pay parity in various counties, Mr. Mason reported that he sent a letter to Marion County on March 2 requesting parity information and outlining that it was brought to the staff's attention that Marion County utilizes a flat fee per case structure in the appellate division. Marion County's response, dated June 5, was also attached.

The letter outlined that the statutes and standards dictate the allowable methods of payment are: 1) Hourly, 2) Salaried, and 3) Contract. Standard G states that "[t]he 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." The accompanying Guidelines state that when there is no comparable salary (as there is not in the appellate division) then \$30,175 and \$60,350 are appropriate contract amounts for part and full time, respectively.

Mr. Mason reported that Marion County's response indicated that the appellate division receives support with the record and appendix from the appellate office, there is no comparable prosecutorial salary and the caseload limit is very low allowing 10 (part time) and 20 (full time) appeals a year, and that the Commentary to the Standard discuss the inappropriateness of flat fee contracts with no caseload limits – not that flat fees per case are inappropriate (See Commentary to Standard H: Contracts). Mr. Mason reported that the issue staff saw is that a flat fee per case with caseload limits is discussed under the Commentary to Standard H but is not allowed under the compensation requirements of Standard G.

Mr. Mason also reported that it came to the attention of Commission staff that some counties (such as Allen in its JC/JT division or Steuben among its hourly attorneys) may have begun implementing a flat fee per hearing type in lieu of hourly or perhaps other compensation. While it is common to provide *additional* monies for dates that include trials, especially under contracts, there is nothing in our standards that would allow the replacement of hourly or contract rates with flat court appearance rates.

Mr. Mason said that it was his recommendation to counties that flat fees per case, outside of contracts that follow our compensation standards and guidelines are disallowed and that flat fees per hearing type are not allowed except to supplement pay (such as additional trial pay).

Mr. Landis said that the compensation provided by Marion County seemed low, but he asked what the appropriate answer would be. Mr. Mason responded that there was a pay parity subcommittee working on this exact issue. Mr. Landis asked whether raising the amount of flat fee amount to be equal to the maximum number of cases divided by a contract or salaried amount would be acceptable. Mr. Mason said that the staff still recommended avoiding flat fee language since it is unlikely to have a caseload of exactly 1.00 FTE.

Mr. Landis said that if a flat fee was allowed, using the minimum contract amount for a part-time contract should be the starting point. He said that there should be a mechanism that allows for greater compensation for greater work.

Mr. Mason said that it had been the understanding of prior counsel as well that flat-fee payments per case were not allowed. Hon. Hanlon noted that there is a complication where there is a caseload limitation. In a way, it creates a per-case fee. Mr. Landis agreed.

Victoria Bailey addressed the Commission. She explained the decision-making with contractors. She said that she works hard to ensure larger, and more complicated cases are kept in house. The idea is to lower the burden on contract counsel. She said in cases where there is an unusually large record, the Commission received extra pay to compensate the attorney for his or her work. She also said that Marion County staff prepare the appendix and provide additional support for contract attorneys even though they are listed as "inadequately staffed."

Mr. Hill addressed the Commission. He said that this method was the way that Marion County had conducted their appellate division since at least 1997. Mr. Hill objected to the characterization that the Commission has not approved this method; he said that this practice was not a secret. He said that some appeals are simple and that the lawyer was compensated better-than-average for their work. Mr. Hill said that his office would have to re-assess how they assign cases if the contract amounts were increased. He said that he believed a 90-day letter would be appropriate that he could take back to the controller.

Ann Sutton addressed the Commission. She said the nature of an appellate contractor is different than other contractors. She said her office has never forced anyone to take a case.

Hon. Hanlon asked what the impediment would be to implementing an hourly fee. Ms. Bailey responded that the nature of the caseload is unpredictability of the practice. There is no

way to know in advance how much time a case might take; this makes budgeting difficult if not impossible to anticipate.

Mr. Mason said that Commission standards are not explicit that flat fees are prohibited.

Mr. Hill re-emphasized that he has been conducting this practice for 10 years. He said that they make no secret of how they conduct their business. He did not want punitive action from the Commission as this practice was long-established. He said he was willing to change the practice in the future should the Commission decide to change the standards.

Hon. Hanlon noted that other counties are not allowed to conduct these practices. Mr. Landis noted that it could be a slippery slope to low bid contracts. He said it sends the message that counties could set any fee that they wanted rather than adequate compensation.

Hon. Hanlon noted that with an increase of staff, these issues came to light. Mr. Mason said that the discovery of this issue came pursuant to an attempt to do a true pay parity audit of all counties.

Mr. Mason said that a modification of the standard is not necessary, but that an addition to the guidelines could be added that payments on a flat-fee basis should not be allowed. Mr. Mason asked whether the Commission wanted a formal guideline or informal.

Mr. Hill addressed the Commission. He suggested that before a standard, he said that more data was necessary including a time study. He did not believe it was the best policy standard moving forward.

Mr. Mason said that the staff were reviewing the pay parity standard generally. Mr. Hensel asked to work with Marion County to roll their data into the proposal.

Mr. Mason said that if the Commission determines that flat-fee contracts are not allowed, then counties would require warning.

Mr. Landis asked Mr. Hill if he were to receive a 90-day letter, what would be the language most beneficial to encouraging change. Mr. Hill responded that he would like the letter to state that flat-fee contracts are not allowed, that there was an understanding that this practice has been going on, and that there has been no active deception.

Mr. Mason said that if the Commission chose to take the position that flat-fee contracts were not allowed, Mr. Mason could be sent to counties that have this practice. Mr. Hill said that a 90-day letter would be required to create the appropriate leverage. Mr. Hill asked that the letter be sent at the end of October if it were to be sent.

Mr. Hill stated that it was very important to note that he will have to re-contract in November and December, and that there would be a reduction in contracts.

Mr. Rutherford asked whether there were any further questions.

7. Private Practice and Full Time Caseloads: A Data Request

Mr. Mason addressed the Commission and stated that it has long been known that contract and salaried public defenders are frequently allowed to handle private caseloads and not report those to the Commission. In some cases, attorneys are potentially allowed to handle 75-100% of an allowable public defense caseload and an unlimited private caseload. In an effort to inform any decisions the Commission may make on this in the future, Mr. Mason asked for authorization to require quarterly reporting of cases in which an attorney has filed an appearance from any public defender that handles 75% or more of a full time caseload.

Sen. Koch noted that the collection of data may be complicated, especially in the matter of civil cases. Mr. Mason said that the concept was to ultimately capture what can be captured.

He said staff did not want client information or other private matters. Mr. Hill noted that his agency does track private caseloads.

Mr. Mason noted that he did not intend to start this proposal until January 1st as preparation and training would be necessary. No action was taken on this item.

8. Financial Status of Public Defense Fund

Mr. Mason reported the status of the public defense fund. He reported that there were sufficient funds to continue operations.

9. Requests for 50% Reimbursement in Capital Cases

Mr. Mason reported on the capital case requirement below. He noted that there was a denial of certain reimbursements because they were court-requested transcripts. The full reimbursements are listed below. He recommended approval of the requests. After a motion, Mr. Landis seconded the motion. Motion passed unanimously.

INDIANA PUBLIC DEFENDER COMMISSION

Reimbursement Requests in Capital Cases

September 19, 2018

COUNTY	DEFENDANT	TOTAL
Allen	Dansby	\$14,728.44
Boone	Baumgardt	\$2,791.36
St. Joseph	Kubsch	\$17,726.10
Warrick	Stephenson	\$78,271.35
TOTAL		\$113,517.25

10. Status of County Compliance with Non-Capital Caseloads

Mr. Mason reported that compliance was up slightly, though that may have been due to the addition of a new county. Mr. Mason noted that Carroll County was out of compliance but showed some improvement. Clark County showed some improvement and were able to hire a deputy chief public defender, which was the expansion of a part-time to a full-time position. Decatur County had poor compliance but did have new hires that may remedy compliance issues. Fayette County had their fifth quarter with compliance issues but have also hired a new public defender as well.

Mr. Mason noted that Jackson County has quarter-time attorneys. He said all four of those positions were out of compliance. He said that it was the opinion of the Chief that a 90-day letter.

Mr. Rutherford asked whether there was a motion, and Hon. Hanlon moved to send a letter to Jackson County. Mr. Landis seconded the motion. Motion passed unanimously.

11. Requests for 40% Reimbursement in Non-Capital Cases

Mr. Mason reported that Benton County did not submit a claim for the first quarter and did not respond to requests to explain why, but the current request was timely. He reported that there were several counties with major timeliness issues. He requested that staff be able to enforce timeliness issues more forcefully. He said that next quarter he would include whether they were late

Mr. Mason recommended approval of the amounts listed below. Mr. Rutherford asked whether there was a motion, and Mr. Hensel moved to approve the amounts. Mr. Landis seconded the motion. Motion passed unanimously.

INDIANA PUBLIC DEFENDER COMMISSION

Second Quarter 2018 Requests for Reimbursements in Non-Capital Cases

1

9/19/2018

COUNTY	Late Factor	2018 Period Covered	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjst mt	Eligible Expenditure	40% Reimbursed
ADAMS	0.00	4/1-6/30	\$105,303.92	\$20,694.30	20%	\$84,609.62	\$33,843.85
ALLEN	0.00	4/1-6/30	\$1,104,291.00	\$72,540.07	7%	\$1,031,750.93	\$412,700.37
BENTON*	0.00	4/1-6/30	\$30,761.59	\$8,789.03	29%	\$21,972.56	\$8,789.02
BLACKFORD	0.00	4/1-6/30	\$68,645.65	\$23,518.77	34%	\$45,126.88	\$18,050.75
BROWN	0.00	4/1-6/30			#DIV /0!	\$0.00	\$0.00
CARROLL	0.00	4/1-6/30	\$47,403.34	\$16,320.92	34%	\$31,082.42	\$12,432.97
CASS	0.00	4/1-6/30	\$162,057.96	\$23,293.18	14%	\$138,764.78	\$55,505.91
CLARK	0.00	4/1-6/30	\$304,238.72	\$9,769.32	3%	\$294,469.40	\$117,787.76
CLINTON	0.00	4/1-6/30	\$112,239.07	\$37,447.76	33%	\$74,791.31	\$29,916.52
CRAWFORD	0.00	4/1-6/30			0%		
DECATUR	0.00	4/1-6/30	\$72,257.86	\$14,484.86	20%	\$57,773.00	\$23,109.20
DEKALB	0.00	4/1-6/30	\$136,704.91	\$11,420.81	8%	\$125,284.10	\$50,113.64
DELAWARE	0.00	4/1-6/30	\$411,795.47	\$4,944.61	1%	\$406,850.86	\$162,740.34
FAYETTE	0.00	4/1-6/30	\$87,206.63	\$9,288.46	11%	\$77,918.17	\$31,167.27
FLOYD	0.00	4/1-6/30	\$174,262.83	\$16,288.75	9%	\$157,974.08	\$63,189.63
FOUNTAIN	0.00	4/1-6/30	\$41,909.67	\$5,628.61	13%	\$36,281.06	\$14,512.42
FULTON	0.00	4/1-6/30	\$117,653.48	\$39,874.19	34%	\$77,779.29	\$31,111.72
GRANT	0.00	4/1-6/30	\$311,347.34	\$9,468.52	3%	\$301,878.82	\$120,751.53
GREENE	0.00	4/1-6/30	\$111,937.55	\$22,358.97	20%	\$89,578.58	\$35,831.43
HANCOCK	0.00	4/1-6/30	\$126,086.50	\$16,921.03	13%	\$109,165.47	\$43,666.19
HENDRICKS	0.00	4/1-6/30	\$397,112.23	\$78,314.43	20%	\$318,797.80	\$127,519.12

HENRY	0.00	4/1-6/30			0%		
HOWARD	0.00	4/1-6/30	\$456,947.14	\$34,053.77	7%	\$422,893.37	\$169,157.35
JACKSON	0.00	4/1-6/30	\$165,392.08	\$8,042.12	5%	\$157,349.96	\$62,939.98
JASPER	0.00	4/1-6/30	\$85,127.98	\$21,117.86	25%	\$64,010.12	\$25,604.05
JAY	0.00	4/1-6/30	\$91,526.19	\$13,422.70	15%	\$78,103.49	\$31,241.40
JEFFERSON	0.00	4/1-6/30	\$173,104.21	\$27,050.48	16%	\$146,053.73	\$58,421.49
JENNINGS	0.00	4/1-6/30	\$100,207.26	\$11,811.10	12%	\$88,396.16	\$35,358.46
KNOX	0.00	4/1-6/30	\$201,228.03	\$49,086.11	24%	\$152,141.92	\$60,856.77
KOSCIUSKO	0.00	4/1-6/30	\$220,932.56	\$52,811.32	24%	\$168,121.24	\$67,248.50
LAGRANGE	0.00	4/1-6/30	\$61,012.42	\$11,194.33	18%	\$49,818.09	\$19,927.24
LAKE	0.00	4/1-6/30	\$1,278,662.70	\$11,489.91	1%	\$1,267,172.79	\$506,869.12
LAPORTE	0.00	4/1-6/30	\$214,689.85	\$19,724.22	9%	\$194,965.63	\$77,986.25
LAWRENCE	0.00	4/1-6/30	\$229,299.89	\$29,194.24	13%	\$200,105.65	\$80,042.26
MADISON	0.00	4/1-6/30	\$480,051.91	\$40,360.75	8%	\$439,691.16	\$175,876.46
MARION	0.00	4/1-6/30	\$5,922,156.14	\$446,834.16	8%	\$5,475,321.98	\$2,190,128.79
MARTIN	0.00	4/1-6/30	\$78,757.93	\$19,024.19	24%	\$59,733.74	\$23,893.50
MIAMI	0.00	4/1-6/30	\$201,873.67	\$19,538.41	10%	\$182,335.26	\$72,934.10
MONROE	0.00	4/1-6/30	\$511,995.14	\$74,785.81	15%	\$437,209.33	\$174,883.73
MONTGOMERY	0.00	4/1-6/30			0%		
NOBLE	0.00	4/1-6/30	\$194,930.44	\$25,866.49	13%	\$169,063.95	\$67,625.58
OHIO	0.00	4/1-6/30	\$20,695.53	\$4,579.60	22%	\$16,115.93	\$6,446.37
ORANGE	0.00	4/1-6/30	\$95,641.09	\$19,885.77	21%	\$75,755.32	\$30,302.13
OWEN	0.00	4/1-6/30	\$72,479.35	\$12,298.83	17%	\$60,180.52	\$24,072.21
PARKE	0.00	4/1-6/30	\$33,900.78	\$7,888.86	23%	\$26,011.92	\$10,404.77
PERRY	0.00	4/1-6/30	\$101,109.97	\$23,763.17	24%	\$77,346.80	\$30,938.72
PIKE	0.00	4/1-6/30	\$37,977.67	\$3,410.85	9%	\$34,566.82	\$13,826.73
PULASKI	0.00	4/1-6/30	\$112,743.11	\$20,821.33	18%	\$91,921.78	\$36,768.71
RIPLEY	0.00	4/1-6/30	\$57,361.38	\$4,766.34	8%	\$52,595.04	\$21,038.02
RUSH	0.00	4/1-6/30	\$131,802.04	\$17,654.37	13%	\$114,147.67	\$45,659.07
SAINT JOSEPH	0.00	4/1-6/30	\$675,284.90	\$72,712.66	11%	\$602,572.24	\$241,028.90
SCOTT	0.00	4/1-6/30	\$117,876.15	\$15,186.34	13%	\$102,689.81	\$41,075.92
SHELBY	0.00	4/1-6/30	\$150,895.18	\$18,775.38	12%	\$132,119.80	\$52,847.92
SPENCER	0.00	4/1-6/30	\$87,353.81	\$10,867.91	12%	\$76,485.90	\$30,594.36
STEUBEN	0.00	4/1-6/30	\$96,445.08	\$17,511.44	18%	\$78,933.64	\$31,573.46
SULLIVAN	0.00	4/1-6/30	\$45,108.29	\$16,919.49	38%	\$28,188.80	\$11,275.52
SWITZERLAND	0.00	4/1-6/30	\$53,596.39	\$8,247.68	15%	\$45,348.71	\$18,139.48
TIPPECANOE	0.00	4/1-6/30	\$1,015,697.17	\$243,299.20	24%	\$772,397.97	\$308,959.19
UNION	0.00	4/1-6/30	\$19,154.00	\$2,199.61	11%	\$16,954.39	\$6,781.76

VANDERBURGH	0.00	4/1-6/30	\$651,971.19	\$123,234.83	19%	\$528,736.36	\$211,494.54
VERMILLION	0.00	4/1-6/30	\$64,216.78	\$16,103.21	25%	\$48,113.57	\$19,245.43
VIGO	0.00	4/1-6/30	\$621,361.06	\$88,648.36	14%	\$532,712.70	\$213,085.08
WABASH	0.00	4/1-6/30	\$93,965.44	\$9,674.31	10%	\$84,291.13	\$33,716.45
WARREN	0.00	4/1-6/30	\$20,552.30	\$3,029.00	15%	\$17,523.30	\$7,009.32
WASHINGTON	0.00	4/1-6/30	\$175,370.48	\$12,995.76	7%	\$162,374.72	\$64,949.89
WELLS	0.00	4/1-6/30			0%		
WHITE	0.00	4/1-6/30			0%		
WHITLEY	0.00	4/1-6/30			0%		
TOTAL			\$19,143,670.40	\$2,131,248.86		\$17,012,421.54	\$6,804,968.62

*Benton County has a claim for 1Q for 2,492.10 that is excluded as it was received very late;

12. Approved Job Descriptions & Agency Staff Goals

Mr. Mason reviewed the job descriptions requested initially by Rep. Dvorak, as well as a mission statement and goals. No formal motion was taken on this issue.

13. Staff Report

Mr. Mason reported that Torrin Liddell was being published in the Journal of Experimental Social Psychology in an Article titled: “Analyzing ordinal data with metric models: What could possibly go wrong?” Mr. Mason reported that Kathleen received a Leadership in the Law Award in May 2018. Mr. Mason reported that staff continued to work with DCS on ways to achieve public defense reform through their agency. Mr. Mason also reported that the Commission is hosting its second annual training for participating counties and individuals who complete requests for reimbursement on October 2, 2018. Mr. Mason also said that the Commission’s workload study is entering its second phase with the final Delphi study round expected to occur in November.

MINUTES
INDIANA PUBLIC DEFENDER COMMISSION
DECEMBER 12, 2018

2:00 P.M.

309 WEST WASHINGTON STREET, SUITE 501 INDIANAPOLIS, IN 46204

The meeting started at approximately 2:00 p.m. Mr. Rutherford was not present, and in his place Mr. David Hensel chaired the meeting. Commission members in attendance were: Rep. John Young, Larry Landis, Hon. Steven Meyer, Richard Bray, Sen. Eric Koch, Hon. Kelsey Hanlon, Sen. Greg Taylor, Hon. Mary Ellen Diekhoff, and Rep. Ryan Dvorak. Staff in attendance were: Derrick Mason, Kathleen Casey, Jennifer Pinkston, Torrin Liddell, Kristen Casper, Andrew Cullen. In the audience were: Joel Wieneke, Suzy St. John, Kim Tandy, Amy Karozos, Robert Hill, Ray Casanova, Emily Gaisch, Cody Eckhart, Ann Sutton, Alan Marshall, Mark Carnell, Brian Jewell, Mark Clark, Gretchen Etling, David Shircliff, Bernice Corley, Michael Moore, and David Carroll.

- **Approval of Minutes of the September 19, 2018 Meeting**

Mr. Landis moved to approve the minutes, and Hon. Hanlon seconded. Motion passed unanimously.

- **Review of 90-Day Letters: Marion & Jackson Counties**

Mr. Mason reviewed the response letters provided by Marion and Jackson Counties. Mr. Mason reviewed that Marion County requested a letter to help negotiate with the issue of flat fee payments to appellate contractors. The letter provided detailed the changes proposed by the county to bring them into compliance with Commission standards. Mr. Mason said that the proposal did appear to meet Commission guidelines and recommended approval.

Mr. Mason noted that Jackson County would be using their supplemental fund to hire more attorneys to ease caseload issues. He said that this plan would help Jackson with meeting Commission standards and was anticipated to rectify the problem that required the 90-day letter. He recommended reimbursement for Jackson County and no further action. Chief Public Defender Alan Marshall thanked Derrick Mason for his help.

The Commission took no further action to suspend reimbursement on either county.

- **Legislative Update: Proposed Legislation & Workgroup Follow-up**

State Appellate Office and misdemeanor reimbursement

Kathleen Casey reviewed the workgroup process that created the legislation for the State Appellate Office.

Ms. Casey reviewed the appellate group process. She noted that the workgroup, composed of practicing public defenders, was created to ensure public defender input into the process. In between the September and December meetings of the Commission, the working group met for two, two-hour meetings for a total of four hours of discussion. The first meeting was on

October 25, 2018 from 11:00 a.m. – 1:00 p.m., and the second on November 19, 2018 from 1:00 p.m. – 3:00 p.m. Ms. Casey noted that a robust e-mail discussion which included approximately fifty e-mails occurred in-between and after the meetings. A recording was made of the second in-person meeting which was available.

Ultimately, the state appellate office working group was unable to create a consensus draft or agree on proposed statutory language. Ms. Casey stated that there was agreement on several principles which the group identified as important for public defense reform:

- Appellate is a specialization – it requires a separate set of skills
- There is space for the State to engage in appellate work with the counties
- Trial and appellate counsel need to work together – there needs to be some collaboration between the trial counsel and appellate
- More resources are needed for both trial and appellate work
- Any proposed office should not handle post-conviction work
- More time/effort is needed to truly flesh out the details of the State Appellate Office
- More data is needed to identify the areas of concern. Merely having a low appeal rate cannot be conflated with a lack of quality, as other forces may give rise to the low appeal rate

Ann Sutton addressed the Commission and expressed concern about the appellate project and advised that a minor delay is necessary to further shore up the details of the project. She said that the document explaining the State Appellate Office should be more detailed. Her comments via e-mail were also submitted to the Commission.

A discussion ensued about the conflict of interest presented by having an advisory council that also had members who could accept cases from the appellate defender. Support for input from appellate defenders was expressed by several members including Mr. Hensel and Mr. Landis.

Ms. Casey also explained it was the intent of this legislation to ensure that mid-size public defender agencies and counties could continue to house those attorneys in their own offices. However, there was no statutory exemption as there was for Marion and Lake.

Hon. Hanlon expressed support for a state office that could provide support and a layer of insulation for those attorneys who practice in small jurisdictions and may end up challenging the same judges over and over. Sen. Taylor said he was in favor of taking action this year. Mr. Hensel agreed.

Ms. Casey also noted that this legislation had the intent to include a juvenile defense office and to allow for direct representation of juveniles on appeal. Amy Karozos stated that her project had found ten (10) juveniles in the Department of Correction who had not been represented by counsel in the underlying case. She stated that it is currently difficult to find lawyers to take cases.

Mr. Hensel asked for a motion to approve the proposed legislation as discussed. Sen. Taylor moved to approve, which was seconded. Mr. Landis clarified that the motion would be as

recommended by staff. Section 1: Option A; Section 2-3, Option C; Section 4, option A; Section 7, Option A; Section 8, Option A.

Sen. Taylor asked whether narrowing down the options would prevent pivots should it be necessary during the legislative process. Mr. Mason reviewed that Mr. Landis had been given the authority as Vice-Chair to make last-minute calls or modifications where necessary and that this was the goal legislation.

Sen. Taylor asked whether approving goal legislation would void the power given to Mr. Landis and Chair Rutherford. Mr. Landis explained that if the options approved were unworkable, then the chair and vice-chair would be empowered to approve alternate options.

Mr. Hensel asked whether there were any other items to point out, and Ms. Casey indicated that included in this bill was also a provision to allow misdemeanor reimbursement.

Chief Hill also expressed concern about the role of the Commission and the Public Defender Council and suggested the State Appellate Office be housed under the Public Defender Council rather than the Commission or that the agency be independent.

Mr. Landis responded that the feedback that the Task Force received was that the creation of an independent appellate agency would be viewed as creating a fourth separate state agency for public defense and was viewed as more bureaucracy.

Motion passed unanimously.

Non-fiscal impact bill (Regionalization)

Mr. Mason reviewed the bill without a fiscal impact that specifically allows counties to regionalize. Mr. Mason explained that with the help of Public Defender Council Assistant Executive Director Michael Moore, this legislation would allow counties to take advantage of inter-local agreements and create regional public defender offices. He emphasized that this would be optional and counties could regionalize any aspect of service, whether attorneys, social workers or administrative staff.

Mr. Mason said while he believed that reimbursement for multi-county regions was already possible, this legislation would make it explicit in the law.

Mr. Mason noted a substantive change from previous discussion was in regards to the length of term of a chief public defender. The original language states a chief public defender is appointed for a term "not to exceed four years". The new language states a chief public defender is appointed for a term of not less than four years.

Mr. Bray asked about financing options for the regional entities. Mr. Landis said that the reimbursement method would remain the same but that the counties would have to determine how to distribute that reimbursement. In this proposal there was no increased reimbursement for regional chiefs.

Sen. Taylor asked whether any counties were excluded. Mr. Landis explained there were no county exclusions. Hon. Hanlon explained that this legislation would not force any county to regionalize. Sen. Taylor said that in his experience there may be issues and that Marion County could be forced to regionalize.

Mr. Landis pointed out that Mr. Moore had been a great help in drafting the language for the statute. Mr. Moore explained that there already exists a statute for inter-local agreements and explained how that process works.

Sen. Taylor stated that he was concerned about Marion County and that usually statutes exempted Marion County from their operation.

Mr. Mason asked about whether the Commission members wished to change the language related to the 4-year term of the chief public defender. Mr. Shircliff added that he had moved counties to become chief and that it would be difficult to retain talent if they did not have a minimum amount of job security.

Mr. Mason asked for approval of the language as outlined in the materials, including the “at least” four years.

Hon. Hanlon moved to approve the amendment, and Rep. Young seconded. Motion passed unanimously.

Composition of Public Defender Boards and request from the Public Defender Council

Mr. Mason noted the county board composition was also up for statutory change. There were two issues: (1) the proposed statutory language reducing the number of judicial appointments from two to one, and adding in its place an appointment by the Commission; and (2) proposed changes in response to a letter from the Public Defender Council.

Mr. Mason first addressed the letter from the Public Defender Council. That organization had submitted a letter to the Commission evaluating the lack of law or standard regarding potential conflicts of interest on public defender boards. Mr. Mason explained that this request stemmed from an attorney for the Department of Child Services being on the PD Board in Allen County (which is exempted from the statutes on Public Defender Board creation due to a population exception in the statute). This DCS attorney is not presently based out of Allen County but has been in the past.

Mr. Mason explained that presently, the statute stated the following about PD Board Members (in counties that have to comply): The members must be persons who have demonstrated an interest in high quality legal representation for indigent persons. However, a member may not be a city, town, or county attorney, a law enforcement officer, a judge, or a court employee. Further, the Commission’s Standard A prohibits a member from being a public defender (which the Commission has only prohibited them from being a PD in the county in which they are a PD Board Member).

Mr. Mason reviewed the proposed statutory language, which attempted to encompass some of the concerns raised in the letter from the Public Defender Council. However, Mr. Mason noted that these proposed changes would not even apply to Allen County because they have an alternative public defender board.

Mr. Mason first asked for approval for the change reducing the number of judicial appointments, which additionally eliminates the requirement of appointment from different political parties. Mr. Hensel asked for discussion. A motion was made to approve, which was seconded by Mr. Landis.

Rep. Dvorak asked for clarification about the elimination of the appointment from different political parties. Mr. Landis explained that in some small counties, there are not differing parties. This often led to a race to appointment to the PD Board. He said that the thinking behind the change to a Commission appointment was to have true diversity, not just political party.

Motion passed unanimously.

Mr. Hensel then led the group to discuss whether or not restrictions on Board membership should be restricted by legislation or Commission administrative rule.

Hon. Hanlon said that more time should be necessary to determine how to proceed with this issue. Mr. Mason said it was his suggestion to consider the change under standard, given the timeline for the upcoming legislative session, and review this issue at the March meeting.

Rep. Dvorak also raised the issue of familial relations sitting on public defender boards when they are related to practicing public defenders.

Commission Composition

Mr. Mason then reviewed the issue of Commission composition. Mr. Mason reviewed that there have been discussion of deepening the Commission membership to add more experience. Mr. Mason reviewed that it was the number one priority of the Public Defender Council to obtain a seat on the Public Defender Commission.

Mr. Mason reviewed the proposed language and proposed members that would be added to the Commission. He noted that there was language included to prevent conflicts of interest. He also noted that there was a suggestion from the Public Defender Council which would allow that agency to appoint without restrictions as well as a suggestion to retain the appointment from the Indiana Criminal Justice Institute.

Mr. Hensel asked whether apart from wanting to get certain types of people on the Commission, whether there was a need for the membership to increase. Mr. Mason said there was no need from a numerical perspective. He said that quorum issues would remain no matter the number of persons on the Commission.

Gretchen Etling also said that the Chief's Association recommended that the Executive Director of the Public Defender Council have a seat on the Commission.

Executive Director Bernice Corley addressed the Commission. She thanked the Commission for the discussion and shared that this could be an opportunity to coordinate language. She shared that the Council would be working to change the composition of the Commission and that this discussion presented an opportunity to present parallel language.

Mr. Landis said the motivation in the Commission's recommendation to change the composition was to add practitioner experience to the Commission, while at the same time avoiding the conflicts of interest that might present themselves.

Sen. Taylor supported adding the Council and recommended removing the appointments from the bar association appointments. He noted that the law schools could provide pro bono opportunities.

Hon. Hanlon questioned whether there would be an issue of conflict of interest if people appointed to the Commission benefit from reimbursement from the Commission. Mr. Landis reviewed the history of his appointment to the Commission and how he came to be both executive director of the Council and appointed to the Commission. For the first twenty years, the State Public Defender was the designee from the Criminal Justice Institute to the Commission. He noted that he has only been on the Commission for the last seven years.

Mr. Landis stated that there were conflicts when he held both positions. He said that he had four board members on the Council from Commission counties when he was Executive Director of the Council. If there was an issue of that county being non-compliant, he was in a position of voting against his employers. Fortunately, none of those counties fell out of compliance, but the issue was an inherent conflict. He noted that the Commission was a regulatory body, rather than a representative one like the Council.

Mr. Landis recommended appointment of someone free from financial conflicts of interest. He said that the Council appointment could be *ex officio*. He said he speaks from experience on the issue of conflict of interest and that it would be his recommendation.

Ms. Corley then addressed the Commission. She referenced her experience as an Ethics Officer in both the Executive and Legislative Branch. She stated she is very familiar with ethics laws. She stated that should there be a specific conflict, that person can abstain from voting if it is related to their county. She said that people can be sophisticated enough to remove themselves from that situation. She said that there should be one voice that represents public defenders and that understands the work of managing caseloads as a member of the Commission.

Rep. Dvorak observed that usually the legislature would make its own decision about board composition and that an exact recommendation from the Commission would not be necessary.

Mr. Landis clarified that his recommendation was to have Council input, but through a non-voting role because of the intense risk of conflicts of interest. Rep. Dvorak noted the issue of conflict with reimbursements.

Mr. Hensel suggested tabling the decision until the next Commission meeting. He suggested that more research from the staff was necessary. Hon. Diekhoff agreed with Mr. Landis, she voiced concerns about conflicts of interest but also noted that input from public defenders is necessary.

A motion was made to table the topic until March, which was seconded. Motion passed unanimously.

- **Indirect Expense Calculations**

Mr. Mason then moved to the issue of Grant County. A consulting firm had begun working with counties to determine indirect costs associated with public defense at the county level. This firm used the federally approved indirect cost rate guide. Grant County began charging the Commission for these indirect rates as of 2Q2017. The following categories were included in the indirect costs: Auditor's Office: wages, benefits, supplies, other services and charges; Treasurer's Office: wages, benefits, supplies; Sheriff: wages, benefits, retirement, office supplies, uniforms, ammo, flares, other; County Council: wages, contractual services, travel, other services and charges; Commission/Administration (rent/building occupancy calculation): county administration (includes wages, benefits, supplies, other services and charges), telephone

systems (communication services and charges), courthouse (other services and charges), maintenance, and a total usage calculation (wages, benefits and other services and charges); IT: county administration, telephones, courthouse, maintenance, and all user fees in each category, and percentage of transactions directly attributable to public defense is calculated. Additional layers of expenses (secondary allocations) are calculated as support to the above level until it becomes fractions of pennies.

Mr. Mason asked the Commission whether these indirect costs would be considered appropriate for reimbursement. Mr. Mason said that historically, the Commission has allowed expenses such as courthouse security to be considered in reimbursement. He said staff recommended not reimbursing the new indirect expenses. He said that the Commission had already reimbursed approximately \$40,000 to the county for such expenses. He said that he recommended making it clear that these expenses were not reimbursable going forward.

Rep. Dvorak expressed concern about how the consulting firm has profited off the calculations. Sen. Taylor expressed concern that any reimbursement for these expenses was provided at all. Mr. Mason said that it was not clear until the additional report was provided in Grant County's reimbursement request. Sen. Koch asked whether there were grounds for a clawback, and Mr. Mason stated that there might be but staff recommendation was to not seek a clawback as we are attempting to provide more guidance.

Hon. Meyer made a motion to not approve the additional monies requested, and indicate to Grant County the Commission intended to discuss clawback and invite the county to explain their motivations. Sen. Taylor seconded. Motion passed unanimously.

- **Financial Status of Public Defense Fund**

Mr. Mason presented the report of the financial status of the fund and indicated that there was sufficient funding to meet all of the requested reimbursement for the quarter.

- **Requests for 50% Reimbursement in Capital Cases**

Mr. Mason recommended approval of all requested capital case reimbursement. Sen. Taylor moved to approve, and Rep. Dvorak seconded. Motion passed unanimously.

INDIANA PUBLIC DEFENDER COMMISSION

Reimbursement Requests in Capital Cases December 12, 2018

COUNTY	DEFENDANT	TOTAL
Allen	Dansby	\$20,163.15
Boone	Baumgardt	\$21,558.37
Clark	Oberhansley	\$15,338.71
St. Joseph	Kubsch	\$18,363.95
Warrick	Stephenson	\$14,700.00
TOTAL		\$90,124.18

- **Status of County Compliance with Non-Capital Caseloads and 40% Reimbursement**

Mr. Mason said that generally, all counties had improved. He drew attention to Carroll County. One attorney had improved compliance, but it was their third quarter out of compliance and there is no plan on how to solve the problem. He recommended a 90-day letter for Carroll County.

Rep. Dvorak asked about Clark County. He said that they had been out of compliance for ten quarters. Mr. Mason said that the county is improving and that they were down to four attorneys out of compliance.

Mr. Mason congratulated Brown County for rejoining the program and noted the presence of two Board members.

Hon. Meyer made a motion to send a 90-day letter to Carroll County, which was seconded by Rep. Dvorak. Motion passed unanimously.

Hon. Meyer made a second motion to approve the requested reimbursement, which was seconded by Rep. Young, motion passed unanimously.

INDIANA PUBLIC DEFENDER COMMISSION

Third Quarter 2018 Requests for Reimbursements in Non-Capital Cases

12/12/2018

COUNTY	Lat e Fac tor	2018 Period Cover ed	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjst mt	Eligible Expenditure	40% Reimbursed
ADAMS	0.0 0	7/1-9/30	\$92,588.35	\$12,962.40	14%	\$79,625.95	\$ 31,850.38
ALLEN	0.0 0	7/1-9/30	\$1,125,818.42	\$90,766.83	8%	\$1,035,051.59	\$ 414,020.64
BENTON	0.0 0	7/1-9/30	\$17,101.45	\$2,312.51	14%	\$14,788.94	\$ 5,915.58
BLACKFORD	0.0 0	7/1-9/30	\$72,700.40	\$18,658.33	26%	\$54,042.07	\$ 21,616.83
BROWN	0.0 0	7/1-9/30	\$48,527.39	\$14,184.93	29%	\$34,342.46	\$ 13,736.98
CARROLL	0.0 0	7/1-9/30	\$56,260.70	\$14,985.21	27%	\$41,275.49	\$ 16,510.20
CASS	0.0 0	7/1-9/30	\$163,583.82	\$21,863.11	13%	\$141,720.71	\$ 56,688.28
CLARK	0.0 0	7/1-9/30	\$332,534.71	\$17,126.72	5%	\$315,407.99	\$ 126,163.20
CLINTON	0.0 0	7/1-9/30	\$80,009.50	\$12,230.40	15%	\$67,779.10	\$ 27,111.64

CRAWFORD	0.0 0	7/1-9/30			0%		
DECATUR*	0.0 0	7/1-9/30	\$88,661.87	\$11,800.65	13%	\$76,861.22	\$ 30,744.49
DEKALB	0.0 0	7/1-9/30	\$160,799.75	\$13,872.77	9%	\$146,926.98	\$ 58,770.79
DELAWARE	0.0 0	7/1-9/30	\$334,463.42	\$16,460.23	5%	\$318,003.19	\$ 127,201.28
FAYETTE	0.0 0	7/1-9/30	\$110,783.32	\$9,691.56	9%	\$101,091.76	\$ 40,436.70
FLOYD	0.0 0	7/1-9/30	\$223,562.28	\$11,318.30	5%	\$212,243.98	\$ 84,897.59
FOUNTAIN	0.0 0	7/1-9/30	\$27,024.97	\$4,729.37	18%	\$22,295.60	\$ 8,918.24
FULTON	0.0 0	7/1-9/30	\$63,637.79	\$18,150.98	29%	\$45,486.81	\$ 18,194.72
GRANT	0.0 0	7/1-9/30	\$227,035.06	\$11,856.76	5%	\$215,178.30	\$ 86,071.32
GREENE	0.0 0	7/1-9/30	\$126,017.71	\$25,039.13	20%	\$100,978.58	\$ 40,391.43
HANCOCK	0.0 0	7/1-9/30	\$160,753.57	\$13,893.74	9%	\$146,859.83	\$ 58,743.93
HENDRICKS	0.0 0	7/1-9/30	\$455,833.78	\$65,842.78	14%	\$389,991.00	\$ 155,996.40
HENRY	0.0 0	7/1-9/30			0%		
HOWARD	0.0 0	7/1-9/30	\$497,177.40	\$29,368.63	6%	\$467,808.77	\$ 187,123.51
JACKSON	0.0 0	7/1-9/30	\$176,287.06	\$10,690.56	6%	\$165,596.50	\$ 66,238.60
JASPER	0.0 0	7/1-9/30	\$91,074.75	\$20,172.89	22%	\$70,901.86	\$ 28,360.74
JAY	0.0 0	7/1-9/30	\$112,462.83	\$23,844.95	21%	\$88,617.88	\$ 35,447.15
JEFFERSON	0.0 0	7/1-9/30	\$169,471.71	\$23,523.27	14%	\$145,948.44	\$ 58,379.38
JENNINGS	0.0 0	7/1-9/30	\$103,705.87	\$14,049.44	14%	\$89,656.43	\$ 35,862.57
KNOX	0.0 0	7/1-9/30	\$198,955.31	\$40,327.87	20%	\$158,627.44	\$ 63,450.98
KOSCIUSKO	0.0 0	7/1-9/30	\$191,549.28	\$40,482.06	21%	\$151,067.22	\$ 60,426.89
LAGRANGE	0.0 0	7/1-9/30	\$67,827.81	\$9,243.53	14%	\$58,584.28	\$ 23,433.71
LAKE	0.0 0	7/1-9/30	\$1,108,884.72	\$10,789.15	1%	\$1,098,095.57	\$ 439,238.23

LAPORTE	0.0 0	7/1-9/30	\$206,176.75	\$19,083.95	9%	\$187,092.80	\$ 74,837.12
LAWRENCE	0.0 0	7/1-9/30	\$173,665.72	\$23,264.11	13%	\$150,401.61	\$ 60,160.64
MADISON	0.0 0	7/1-9/30	\$442,767.17	\$21,737.81	5%	\$421,029.36	\$ 168,411.74
MARION	0.0 0	7/1-9/30	\$5,069,352.14	\$402,146.12	8%	\$4,667,206.02	\$ 1,866,882.41
MARTIN	0.0 0	7/1-9/30	\$81,199.41	\$11,025.96	14%	\$70,173.45	\$ 28,069.38
MIAMI	0.0 0	7/1-9/30	\$181,022.85	\$17,552.40	10%	\$163,470.45	\$ 65,388.18
MONROE	0.0 0	7/1-9/30	\$581,748.99	\$85,187.27	15%	\$496,561.72	\$ 198,624.69
MONTGOMERY	0.0 0	7/1-9/30			0%		
NOBLE	0.0 0	7/1-9/30	\$218,618.96	\$32,328.76	15%	\$186,290.20	\$ 74,516.08
OHIO	0.0 0	7/1-9/30	\$20,517.33	\$2,766.93	13%	\$17,750.40	\$ 7,100.16
ORANGE	0.0 0	7/1-9/30	\$150,385.48	\$28,678.16	19%	\$121,707.32	\$ 48,682.93
OWEN	0.0 0	7/1-9/30	\$68,024.21	\$11,307.66	17%	\$56,716.55	\$ 22,686.62
PARKE	0.0 0	7/1-9/30	\$37,177.93	\$13,536.58	36%	\$23,641.35	\$ 9,456.54
PERRY	0.0 0	7/1-9/30	\$85,360.44	\$15,894.70	19%	\$69,465.74	\$ 27,786.30
PIKE	0.0 0	7/1-9/30	\$65,270.51	\$11,983.14	18%	\$53,287.37	\$ 21,314.95
PULASKI	0.0 0	7/1-9/30	\$162,487.18	\$56,438.87	35%	\$106,048.31	\$ 42,419.32
RIPLEY	0.0 0	7/1-9/30	\$71,436.42	\$6,971.52	10%	\$64,464.90	\$ 25,785.96
RUSH	0.0 0	7/1-9/30	\$108,922.60	\$18,399.86	17%	\$90,522.74	\$ 36,209.09
SAINT JOSEPH	0.0 0	7/1-9/30	\$625,910.21	\$67,903.18	11%	\$558,007.03	\$ 223,202.81
SCOTT	0.0 0	7/1-9/30	\$123,801.99	\$13,484.42	11%	\$110,317.57	\$ 44,127.03
SHELBY	0.0 0	7/1-9/30	\$158,675.26	\$21,616.85	14%	\$137,058.41	\$ 54,823.36
SPENCER	0.0 0	7/1-9/30	\$34,791.65	\$1,277.00	4%	\$33,514.65	\$ 13,405.86
STEUBEN	0.0 0	7/1-9/30	\$110,786.95	\$23,711.13	21%	\$87,075.82	\$ 34,830.33

SULLIVAN	0.0 0	7/1-9/30	\$71,101.39	\$11,841.32	17%	\$59,260.07	\$ 23,704.03
SWITZERLAND	0.0 0	7/1-9/30	\$49,147.81	\$10,549.70	21%	\$38,598.11	\$ 15,439.24
TIPPECANOE	0.0 0	7/1-9/30	\$969,254.93	\$265,397.51	27%	\$703,857.42	\$ 281,542.97
UNION	0.0 0	7/1-9/30	\$20,843.00	\$3,889.66	19%	\$16,953.34	\$ 6,781.34
VANDEBURGH	0.0 0	7/1-9/30	\$766,349.70	\$119,667.32	16%	\$646,682.38	\$ 258,672.95
VERMILLION	0.0 0	7/1-9/30	\$49,167.24	\$9,896.60	20%	\$39,270.64	\$ 15,708.26
VIGO	0.0 0	7/1-9/30	\$526,018.53	\$72,935.98	14%	\$453,082.55	\$ 181,233.02
WABASH	0.0 0	7/1-9/30	\$89,024.23	\$14,551.78	16%	\$74,472.45	\$ 29,788.98
WARREN	0.0 0	7/1-9/30	\$16,126.50	\$2,295.00	14%	\$13,831.50	\$ 5,532.60
WASHINGTON	0.0 0	7/1-9/30	\$140,583.66	\$11,174.58	8%	\$129,409.08	\$ 51,763.63
WELLS	0.0 0	7/1-9/30			0%		
WHITE	0.0 0	7/1-9/30			0%		
WHITLEY	0.0 0	7/1-9/30			0%		
TOTAL			\$18,160,812.14	\$2,058,734.89		\$16,102,077.25	\$ 6,440,830.90

- **Pilot project grant request**

Mr. Mason updated the Commission on the status of a grant request to create a pilot project for CHINS representation. He stated that there was a need for expertise. He stated that some money may be sent to the Commission from the grant. He requested that the Commission approve an up to \$50,000, one-year position to coordinate and liaison with the Commission and Council. Mr. Mason said that he had discussed the option with Chairman Rutherford.

Sen. Koch asked Mr. Mason how the Commission would measure the success. Mr. Mason said that it would be a matter of the number of meetings, and ultimately whether the project to create a pilot project was able to get off the ground. Mr. Mason clarified that this grant would be a planning grant.

Sen. Koch clarified that this funding request would backfill any money not provided by the grant.

Hon. Hanlon moved to approve the contract position, which was seconded. Motion passed unanimously.

The Commission item regarding CLE approval was moved to the March meeting.

Rep. Dvorak asked if more supervision was necessary and management of the job descriptions for staff was necessary at the meeting. He noted the responsibility of the Commission to oversee the management of their activities. Mr. Landis said a more detailed fiscal report was necessary and provided more frequently.

- **Update: Private caseload data request**

Vigo County Chief Public Defender Gretchen Etling reported that the Chiefs had voted to request that the Commission stall the request for private caseload data reports for public defenders with caseloads of .75 or higher. It was her belief that the Chiefs were not aware of this request until the date of the meeting. She stated that the Chiefs would like input. She reiterated that it was her understanding that the Commission valued Chief input. She noted strong and severe objections to the start of this data collection process. She asked that the rollout be suspended until the Chiefs have the opportunity to respond in March. She noted a letter from the Public Defender Council had sent a letter asking to stall the reporting requirement as well.

Mr. Mason reported that the pay parity subcommittee recommended collecting the private caseload data from certain attorneys, based on the recommendations of the 6th Amendment Center and the Task Force on Public Defense. In order to rebut that information, the recommendation was to start asking counties that do not have a restriction to complete a form to begin to understand the caseloads. Mr. Mason said that the intention was to begin January 1st, but then a delay was considered until April. Mr. Mason said that there was a concern that if the decision was delayed until the March meeting, the data collection would not begin until June. Mr. Mason reiterated that no punitive action would be taken based on this data.

Rep. Dvorak asked Chief Etling to clarify her objection, and whether she objected to the data collection in the first place. Chief Etling provided the example of an attorney who had a medical practice at night and that sort of work not being collected in this effort. She said her attorneys objected to the collection of private caseload data. Chief Etling said that her attorneys objected to having to report what they do in their private time.

Mr. Hensel stated that he did not think it was the first time that many Chiefs had heard of this request. He noted that this was brought up at the previous Commission meeting. Chief Etling stated that it was not discussed at the Chief's meeting.

Hon. Hanlon said that the contracts where someone is at .75 or above, the nature of the private work is important. If it's legal work that is different than non-legal.

Lawrence County Chief David Shircliff said that he was concerned about the impact of Chief Public Defenders. He was not opposed to data collection but asked for a delay.

Chief Etling said that even reporting the data would have a detrimental impact. Chief Shircliff said that this would not affect his county but that he had heard from other Chiefs that this would severely affect their county.

Sen. Taylor noted that the purpose of the Commission was to ensure effective representation for indigent persons. He observed that one of the ways to ensure this quality is to have a full picture of an attorney's caseload.

Mr. Hensel said that it was his impression that the Chiefs were asking to not provide information at all. He said that it was the intention of the Commission to seek information on this issue.

Ms. Corley said that it was her impression that her organization was left out of the conversation. Mr. Mason noted that two Council Board members were on the subcommittee that made the decisions to seek out the caseload information.

Hon. Meyer made a motion to delay the letter, and Mr. Hensel seconded that motion. He said that he wanted the Chiefs to work with staff to work out as much as possible. Motion passed unanimously.

Rep. Dvorak noted that it was his impression that rough percentages was the intent of the information sought by staff. That information may be more helpful than cause numbers in the end.

Sen. Taylor noted that the first question was whether or not the county has a policy, and that if the county does not have a policy, then there is a legitimate concern about the conduct of the attorney in the absence of a policy.

Motion passed unanimously

Staff Report

The meeting dates for next year were set for 2019: March 20, June 12, September 25, December 18.

- **Other Matters**

The meeting was adjourned.