

DRAFT

INDIANA COMMISSION ON COURT APPOINTED ATTORNEYS

September 18, 2024

2:00 PM

101 West Ohio, 18th Floor, Commission Conference Room

Indianapolis, Indiana 46204

Members in attendance:

Mark W. Rutherford, Chair (in person)
Ms. Bernice Corley (in person)
Ms. Samantha DeWester (in person)
Mr. David J. Hensel (in person)
Sen. Eric Koch (remote)
Rep. Ryan Lauer (in person)
Sen. Gregory G. Taylor (remote)

Members absent:

Hon. Mary Ellen Diekhoff
Hon. Kelsey B. Hanlon
Rep. Ragen Hatcher
Hon. Steven P. Meyer

Staff in attendance:

Derrick Mason (in person)
Andrew Cullen (in person)
Andrew Falk (remote)
Linda Hunter (in person)
Torrin Liddell (remote)
Jennifer Pinkston (remote)
Tristan Snell (remote)

Audience members:

Jim Abbs, Noble County Chief Public
Defender and President, Chiefs
Association (remote)
Ray Casanova, Marion County Public
Defender Agency (in person)
Birjan Crispin, Legislative Staff, House
of Representatives (in person)
Gretchen Etling, Vigo County Chief
Public Defender (remote)
Lyndsay Gilman, Intern (remote)
Jennifer Hallowell, Hallowell
Consulting (remote)
Amy Karozos, State Public Defender
(remote)
Sabra Stevens, Hallowell Consulting
(remote)
Luke Thomas, Hallowell Consulting
(remote)
Joel Wineke, Public Defender Council
(remote)
Zach Stock, Public Defender Council
(remote)

At 2:05 p.m., Chair Mark Rutherford called the meeting to order. Introductions were made and it was established that a quorum was present.

1. Approval of Minutes of the June 12, 2024 Meeting

There were no changes to the minutes. Mr. Hensel moved to approve the minutes; Rep. Lauer seconded the motion. Ms. Corley abstained. The minutes were approved unanimously.

2. Approval of New & Amended Comprehensive Plans:

a. Blackford County (Creation of Office & Part-time Chief PD)

Mr. Mason stated that Blackford County has created and hired a part time chief public defender. The county has submitted a fully updated plan that represents all the updates since the county joined. Mr. Mason recommended that the Blackford County plan be approved. Ms. Corley moved to approve the plan with the noted corrections. Mr. Hensel seconded the motion. The Blackford County plan was approved unanimously.

b. Howard County (Updated Standards Only)

Mr. Mason stated that Howard County has had a few issues, particularly regarding salary. The county would like to update their plan, and have included certain provisions to help make policies clear for the county. While the county's updates meet all of the Commission's requirements, in several cases the plan includes more detailed requirements than the Commission mandates.

Ms. Corley noted language in Section 310 providing that a failure to pay can lead to time in jail, and she inquired whether that language is standard? She noted that the Blackford and LaPorte counties did not have similar language. Mr. Mason confirmed that the identified language was an outlier. Although it is in the statute, it is not required by the Commission to be in the comprehensive plan. Ms. Corley opined that the language felt heavy-handed and inappropriate for the comprehensive plan.

The Chairman asked Ms. Corley if she would like Mr. Mason to go back to the county to inquire about the provision. She asked that he do so.

Mr. Mason recommended that the Howard County plan be approved. Ms. Corley moved to approve the plan with Section 310. Ms. DeWester seconded the motion. The Howard County plan was approved unanimously with the understanding that Section 310 would be removed.

c. LaPorte County (Formal Part-time Chief PD Position & Standard O)

Mr. Mason stated that LaPorte had a chief public defender position when they first joined around 1993, then switched to a managing chief at some point. They are returning to having a part-time chief, who will work from her law office. The remaining changes are updates to the plan.

Ms. Corley asked if the deputy chief position is being staff immediately, and Mr. Mason responded that the county wanted the possibility of having a chief deputy position. Ms. Corley noted the population and criminal caseload of LaPorte County (111,000 people and 2,489 cases in 2023) compared to Noble County (population 47,000, with 743 cases), and observed that Noble County has a full-time chief and chief deputy. Ms. Corley expressed her concern that the Commission was setting up the LaPorte County chief to fail as a part-time chief. She inquired if the Commission should establish a standard recommendation for the size and caseloads of different counties. There were no other comments or concerns. Rep. Lauer moved to approve the amended comprehensive plan. Mr. Taylor seconded the motion. The LaPorte County plan was approved unanimously.

d. NEW: White County (Hourly System)

Mr. Mason praised Commission staff for their work on the Title IV-E reimbursement program, which exposed White County to the Commission. White County currently has an hourly system. While it will not start with a chief public defender position, it desires to do so in the future.

As a side note, Mr. Mason noted that Starke County is the latest county to join the Commission. Hamilton County, Porter County, and others continue to show interest. Sen. Taylor asked how many counties are participating. Mr. Mason stated that

there are 68 counties receiving full reimbursement, 67 counties receiving Title IV-E funds and 40% reimbursement, one county that participates in non-capital reimbursement (Lake County) but does not have juvenile court participation, and seven more participate solely in the Title IV-E program—all of which can be seen on the Commission website.

Mr. Mason recommended that the White County plan be approved. Ms. Corley moved to approve the plan. Sen. Taylor seconded the motion. The White County plan was approved unanimously.

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

Mr. Mason presented the Commission's budget for review. He stated that there were sufficient funds to pay all pending reimbursement requests.

4. Status of County Compliance

Mr. Mason addressed county compliance. Many of the problems arose due to one attorney who did not notify counties she took another position elsewhere and continued to receive cases. The only county to which Mr. Mason mentioned the possibility of sending a 90-day letter was St. Joseph, which was also a concern last quarter. He noted that last quarter they had 11 attorneys out of compliance, but that number was down to four attorneys this quarter. Because of this significant improvement, he did not recommend a 90-day letter. Sen. Taylor asked why St. Joe has had issues for as long as it has. Mr. Mason responded that the county has had a number of issues, including inadequate compensation and less proactive approaches than were required. There was no further discussion and no action was taken.

5. Requests for Reimbursement

a. 50% Reimbursement in Death Penalty Cases

Three counties requested capital reimbursement for a total of \$87,232.16 in death penalty requests for reimbursement (see table below). There were some errors that needed correction, but overall Mr. Mason recommend approval of the requests.

The Wayne County defendant died while incarcerated, so this was their last request for reimbursement. Marion County is standard and on time. Madison County had a \$40 addition in error which resulted in a slight change in what they requested. A new death penalty case is beginning in Hendricks County and Mr. Mason is setting a meeting to start their reimbursements.

Ms. Corley asked about the difference in hourly rates. Mr. Mason explained that some rate differentiation is due to when the cases started. Others are related to courts assigning higher rates but not following proper protocols, so the Commission is unable to reimburse the higher rate.

Ms. DeWester moved to approve the death penalty reimbursement requests. Mr. Hansel seconded the motion. There were no objections. The motion carried.

Reimbursement Requests in Capital Cases

September 18, 2024

COUNTY	DEFENDANT	TOTAL
Madison	Boards	\$22,167.64
Marion	Mitchell	\$905.33
Wayne	Lee	\$64,159.19
TOTAL		\$87,232.16

b. 40% Reimbursement in Non-Capital Cases

Mr. Mason reported that the total reimbursement request for the second quarter of 2024 was \$9,587,639.25 (see Appendix 1). He stated he would like the Commission to withhold payment from Owen County until the county provides information that Commission staff have requested relating to their desk audit and pay parity. The amount to be reimbursed would not change, he explained, but the Commission needs to confirm that the county is compliant.

Ms. Corley asked if Carroll County is seeking reimbursement in the Richard Allen case. Mr. Mason responded that he sent the county a letter and that the judge declined to provide a complete breakdown of expenses, but the Commission

approved and has been sending reimbursements regardless. Ms. Corley then asked a general question about how one could tell whether counties provide health insurance and other benefits to their public defenders. Mr. Mason explained the Commission's system for reimbursing counties for benefits but agreed that this form does not identify which provide benefits.

Mr. Hensel moved to approve the reimbursement request, noting that the reimbursement would be withheld from Owen County until the county provided the requested information. Ms. DeWester seconded the motion. The motion carried unanimously and the reimbursements were approved.

6. Local Public Defender Board Appointments

Mr. Cullen recommended the re-appointment of two individuals—Eric Spencer in Clinton County and Robert Little in Jefferson County—and the new appointment of two individuals: Luz Elena Vargas in Noble County and Josh Hutchison in Warrick County. Mr. Cullen recommended the appointment of all four. Sen Taylor reminded the Commission that previously he had asked Commission staff to seek diversity candidates, and he asked how that has been going. Mr. Cullen stated that the Commission only receives one appointment, with the judges and county commissioners appoints the other two. Mr. Cullen promised that when Commission staff have the opportunity to appoint a diversity candidate, they do. Mr. Mason added that the Commission does outreach, but does not receive much interest. Mr. Cullen stated that he wanted Sen. Taylor to know that the senator's voice is in his head every quarter. Sen. Taylor moved to approve the nominations. Ms. DeWester seconded the motion. The motion carried unanimously.

The chair moved agenda item 10 up because it is the only other agenda item that needed a quorum for a vote.

10. Other Matters

- a. Amendment to Guidelines on Supplemental Fund Usage*

Mr. Mason recognized the language of the existing Guideline regarding counties' use of the Supplemental Public Defender Services Fund and explained that it is essentially a rainy-day fund – a fund to be used for expenses for which it is difficult to budget. He provided a brief overview of current uses and recognized that some counties do not know how to use the Supplemental fund or do not have needs for the Fund. He stated that Commission staff are proposing additional uses for the Supplemental Fund and recommending that the Guideline be updated to include these uses. He stated that the counties may need help in creating a new chief public defender position, deputy chief, or new office, and proposed that counties be allowed to use the supplemental fund for these purposes for up to one year.

Mr. Hensel asked how much counties have in supplemental funds. Mr. Mason said it varies considerably and usually relates to how much judges in the county assess fees on defendants. Rep. Lauer asked how these funds are created, and Mr. Mason answered that they are a statutory creation that every county is required to have. The Commission is the only auditor of these funds' use. The only money placed in the funds are public defense reimbursements and fees. Rep. Lauer asks if this is true and relevant for counties not in the Commission. Mr. Mason says the Commission's enforcement extends only over participating counties. When new counties join the Commission, it can be a problem because prior to participating in the Commission, the county has misused the Funds.

Mr. Abbs stated that the Fund is a rollover account that does not go back into the county general view. He is very strict about how the Noble County fund is used. It currently contains about \$200,000. Noble County used the fund for furniture for a new office. While the Fund can be very helpful, so he does not want to see the rules become too loose, allowing counties to spend their funds too readily.

Ms. DeWester moved to amend the Guidelines as proposed by Commission staff, so long as the new uses were limited to one year. Ms. Corley seconded the motion. The motion carried unanimously.

b. Election of Chairperson

The Chair noted that he was last appointed Chair of the Commission two years ago. Since his term has expired, he called for nominations for Chair. Ms. DeWester nominated Mark Rutherford to be the Chair. Ms. Corley seconded the motion. There were no other nominations. The motion carried unanimously. Sen. Taylor asked if it could be a perpetual appointment. The Chair thanked the Commission for the appointment.

7. Rule 6.1 Public Comment

Mr. Mason called attention to the materials provided to Commission members with feedback on the Commission's potential recommended changes to the Supreme Court's rules on death penalty defense contained in Criminal Rule 6.1. He stated that he would not go through the responses but that he anticipated the Commission would consider the responses in more detail at the December meeting.

8. Support Staff Standard Update

Mr. Mason reminded the Commission that about a year ago, Jim Abbs requested a change to the standards for support staff ratios and pay parity. The Commission adopted Standard O to address some of these concerns. Commission staff surveyed other states nationwide to help determine national staffing ratios. Commission staff also surveyed public defenders and received 250 responses from more than 36 Indiana counties. Between 97 and 99% of respondents said they needed the same or increased support staff (clerical, paralegals, social workers, or investigators). Most respondents without access to social workers, and to a lesser extent investigators, stated they did not know how to use these types of staff. He proposed to the Public Defender Council that there could be some training opportunities for defenders in how to use support staff. He also recommended additional conversations with Mr. Abbs and the Chiefs' organization. Mr. Mason stated he anticipated reporting back to the Commission at the December or more likely the March meeting with any proposed changes.

9. Legislative & Policy Updates

Mr. Cullen stated that the Commission on Indiana's Legal Future has released its first report, which discusses structural issues with public defense systems. Additional discussions are occurring behind the scenes.

Mr. Mason and Mr. Cullen proposed a scholarship program for deputy prosecutors and public defenders, and Rep. Greg Steuerwald is drafting such a bill now that would provide law school scholarships to students who would commit to serving as public defenders or prosecutors for five years.

Additionally, Rep. Chris Jeter and Sen. Aaron Freeman are preparing an omnibus criminal justice reform bill that may work to accomplish some of the Commission's goals, but may also include significant funding for deputy prosecutors. The proposed language would require the state to reimburse counties for fifty percent of deputy prosecutor salaries if they are paid at least \$100,000 per year. The Indiana Prosecuting Attorneys Council (IPAC) contacted the Commission and, recognizing that the legislation would impact the Commission, suggested working together. The fiscal impact for prosecutors would be about \$45 million dollars, so Commission staff are considering what, in addition to pay parity, the Commission could also request. Mr. Cullen discussed a variety of options listed in the materials provided to the Commission. Mr. Cullen stated that the IPAC legislative committee was meeting September 19, after which he would talk with them, the Chiefs' organization, and the Council to consider options.

Mr. Cullen asked if there were any concerns or objections to this approach. Mr. Abbs stated he thought misdemeanor reimbursement should be included in the discussion. Mr. Cullen responded that Commission staff would rather not re-open the misdemeanor conversation until the Commission's pilot program is completed.

There were no other comments or concerns. Rep. Lauer moved to adjourn. Mr. Hensel seconded the motion. There were no objections. The meeting was adjourned at 3:21 p.m.

Appendix 1

Commission on Court Appointed Attorneys Non Capital Claims 2Q2024 9/18/24

County	Total Expenditure	Non-reimbursable Adjustment	% Adjusted	Eligible Expenditure	40% Reimbursed
Adams	\$124,753.08	\$33,891.50	27.17%	\$90,861.58	\$36,344.63
Allen	\$1,466,427.76	\$109,551.90	7.47%	\$1,356,875.86	\$542,750.34
Benton	\$31,487.37	\$5,314.00	16.88%	\$26,173.37	\$10,469.35
Blackford	\$69,710.50	\$11,883.45	17.05%	\$57,827.05	\$23,130.82
Brown	\$61,737.21	\$14,277.88	23.13%	\$47,459.33	\$18,983.73
Carroll	\$329,129.31	\$12,865.93	3.91%	\$316,263.38	\$126,505.35
Cass	\$194,935.32	\$26,322.46	13.50%	\$168,612.86	\$67,445.14
Clark	\$540,833.41	\$44,162.81	8.17%	\$496,670.60	\$198,668.24
Clinton	\$141,229.18	\$27,578.82	19.53%	\$113,650.36	\$45,460.15
Crawford	\$37,862.33	\$9,252.87	24.44%	\$28,609.46	\$11,443.78
Decatur	\$148,416.04	\$37,233.92	25.09%	\$111,182.12	\$44,472.85
DeKalb	\$275,925.09	\$24,373.66	8.83%	\$251,551.43	\$100,620.57
Delaware	\$507,059.54	\$2,444.58	0.48%	\$504,614.96	\$201,845.98
Elkhart	\$1,065,721.00	\$130,223.27	12.22%	\$935,497.73	\$374,199.09
Fayette	\$107,958.99	\$22,294.15	20.65%	\$85,664.84	\$34,265.94
Floyd	\$367,035.32	\$64,378.15	17.54%	\$302,657.17	\$121,062.87
Fulton	\$89,786.51	\$37,975.82	42.30%	\$51,810.69	\$20,724.28
Gibson	\$241,552.77	\$24,645.83	10.20%	\$216,906.94	\$86,762.77
Grant	\$312,981.00	\$10,776.18	3.44%	\$302,204.82	\$120,881.93
Greene	\$208,701.79	\$30,464.03	14.60%	\$178,237.76	\$71,295.10
Hancock	\$266,883.89	\$22,025.00	8.25%	\$244,858.89	\$97,943.56
Harrison	\$185,265.60	\$10,831.58	5.85%	\$174,434.02	\$69,773.61
Hendricks	\$615,504.60	\$89,970.88	14.62%	\$525,533.72	\$210,213.49
Howard	\$731,640.06	\$55,851.00	7.63%	\$675,789.06	\$270,315.62
Jackson	\$310,242.75	\$12,977.82	4.18%	\$297,264.93	\$118,905.97
Jasper	\$100,007.00	\$37,113.95	37.11%	\$62,893.05	\$25,157.22
Jay	\$166,816.05	\$20,554.07	12.32%	\$146,261.98	\$58,504.79
Jefferson	\$171,408.78	\$32,510.99	18.97%	\$138,897.79	\$55,559.12
Jennings	\$124,740.04	\$7,256.81	5.82%	\$117,483.23	\$46,993.29
Knox	\$250,535.53	\$38,066.24	15.19%	\$212,469.29	\$84,987.71
Kosciusko	\$311,870.85	\$122,076.78	39.14%	\$189,794.07	\$75,917.63
LaGrange	\$150,325.89	\$37,726.79	25.10%	\$112,599.10	\$45,039.64
Lake	\$1,574,892.46	\$707.54	0.04%	\$1,574,184.92	\$629,673.97

LaPorte	\$377,019.33	\$39,948.62	10.60%	\$337,070.71	\$134,828.28
Lawrence	\$287,346.22	\$51,754.52	18.01%	\$235,591.70	\$94,236.68
Madison	\$525,912.03	\$10,034.91	1.91%	\$515,877.12	\$206,350.85
Marion	\$6,826,181.28	\$835,999.28	12.25%	\$5,990,182.00	\$2,396,072.80
Martin	\$75,450.01	\$17,710.61	23.47%	\$57,739.40	\$23,095.76
Miami	\$196,291.65	\$23,076.84	11.76%	\$173,214.81	\$69,285.92
Monroe	\$771,549.51	\$129,088.17	16.73%	\$642,461.34	\$256,984.53
Noble	\$306,391.70	\$45,778.66	14.94%	\$260,613.04	\$104,245.22
Ohio	\$92,307.70	\$22,194.30	24.04%	\$70,113.40	\$28,045.36
Orange	\$103,781.53	\$15,011.13	14.46%	\$88,770.40	\$35,508.16
Owen	\$136,936.89	\$13,507.95	9.86%	\$123,428.94	\$49,371.58
Perry	\$83,664.13	\$7,965.63	9.52%	\$75,698.50	\$30,279.40
Pike	\$67,195.88	\$4,863.51	7.24%	\$62,332.37	\$24,932.95
Pulaski	\$73,776.14	\$19,993.68	27.10%	\$53,782.46	\$21,512.99
Ripley	\$52,158.16	\$9,880.07	18.94%	\$42,278.09	\$16,911.23
Rush	\$127,211.98	\$14,280.45	11.23%	\$112,931.53	\$45,172.61
Scott	\$153,704.60	\$25,785.31	16.78%	\$127,919.29	\$51,167.72
Shelby	\$211,910.10	\$31,397.00	14.82%	\$180,513.10	\$72,205.24
Spencer	\$82,801.27	\$3,958.80	4.78%	\$78,842.47	\$31,536.99
Steuben	\$160,383.87	\$49,729.48	31.01%	\$110,654.39	\$44,261.76
StJoseph	\$777,025.67	\$72,242.55	9.30%	\$704,783.12	\$281,913.25
Sullivan	\$155,004.57	\$19,460.82	12.55%	\$135,543.75	\$54,217.50
Switzerland	\$33,829.96	\$8,835.34	26.12%	\$24,994.62	\$9,997.85
Tippecanoe	\$1,115,235.01	\$150,250.33	13.47%	\$964,984.68	\$385,993.87
Union	\$26,438.85	\$924.32	3.50%	\$25,514.53	\$10,205.81
Vanderburgh	\$1,256,425.78	\$69,667.03	5.54%	\$1,186,758.75	\$474,703.50
Vigo	\$936,546.25	\$142,087.64	15.17%	\$794,458.61	\$317,783.44
Wabash	\$130,061.34	\$25,167.21	19.35%	\$104,894.13	\$41,957.65
Warren	\$17,053.02	\$3,039.87	17.83%	\$14,013.15	\$5,605.26
Warrick	\$201,469.81	\$17,601.83	8.74%	\$183,867.98	\$73,547.19
Washington	\$173,189.86	\$20,561.90	11.87%	\$152,627.96	\$61,051.18
WCIPDO	\$174,282.33	\$25,706.27	14.75%	\$148,576.06	\$59,430.42
White	\$92,759.52	\$20,490.10	22.09%	\$72,269.42	\$28,907.77
TOTAL	\$27,084,672.97				\$9,587,639.25