

INDIANA PUBLIC DEFENDER COMMISSION

March 27, 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 (remote)
Ms. Samantha DeWester (in person)
Hon. Kelsey B. Hanlon (in person)
Rep. Ragen Hatcher (remote)
Mr. David J. Hensel (remote)
Sen. Eric Koch (remote)
Rep. Ryan Lauer (in person)
Sen. Gregory G. Taylor (remote)

Members absent:

Hon. Mary Ellen Diekhoff
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)
Tristan Snell (in person)

Audience members:

Jim Abbs, Noble County Chief Public
Defender and President, Chiefs
Association (remote)
Bryan Behgam, member of public
(remote)
Ray Casanova, Marion County Public
Defender Agency (in person)
Gretchen Etling, Vigo County Chief
Public Defender (remote)
Sabra Stevens, Hallowell Consulting (in
person)

At 2 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 December 13, 2023 Meeting

There were no changes to the minutes. Ms. DeWester moved to approve the minutes. Judge Hanlon seconded the motion. The minutes were approved unanimously.

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

Mr. Mason stated that there were sufficient funds to pay all reimbursement requests. He noted that for the first time in several quarters, the non-capital reimbursement requests did not set a record high.

3. Status of County Compliance

a. 90-Day Update: Steuben & LaGrange Multi-County

Mr. Mason reminded the Commission that following the December meeting, 90-day letters were sent to Steuben and LaGrange counties regarding multi-county attorneys. Both counties responded very well and indicated that they are working together to reduce the caseload of the attorney taking cases in both counties. The counties expressed concerns that their efforts to reduce this attorney's caseload may impact other county attorneys but they will continue to address the issue. Considering the counties' responses and immediate efforts, Mr. Mason recommended approval of their plans.

Ms. Corley inquired whether Steuben and LaGrange had considered creating a multi-county district. Mr. Mason responded that they had not because when he had spoken with LaGrange last year, they very much wanted their own office—both the judges and the prosecutor wanted a full-time public defender. He does think it could be an option but the primary focus now is LaGrange seeking a full-time public defender.

Ms. DeWester moved to accept the plans submitted by LaGrange and Steuben County in response to their 90-day letters. Ms. Corley seconded the motion. There were no objections. The motion passed.

b. Other County Updates: Carroll, Jasper, & Warrick

Mr. Mason reminded the Commission that at the last meeting, there was a long discussion about the Delphi murder case in Carroll County and the county's failure to submit reimbursement requests. The Commission sent letters to all parties and the county did submit an amended third quarter reimbursement request. No fourth quarter expenses were submitted. The Delphi murder case reimbursement request did not distinguish between attorney fees and expert, investigative, and other expenses, but because it was all lumped together for the two Delphi attorneys (who have only this one case in Carroll County), the actual amount for the Delphi case was readily apparent. Mr. Mason recommended that the Commission accept and approve the amended reimbursement request.

The Chair inquired whether the county's request violated the Commission's rules for reimbursement requests. Mr. Mason stated that it did not. Ms. DeWester asked whether the amounts had been approved by the court and had already been paid, which Mr. Mason affirmed. She argued that since the court had approved them, there should be no concerns. Ms. Corley wondered whether there were still outstanding expenses in front of the court that needed to be approved. Mr. Mason said he had spoken to one of the attorneys and in fact, learned there are certain expenses that still need to be paid. He told them that the county's comprehensive plan requires monthly payments where payments are requested. The attorneys have not been submitting monthly bills. Mr. Mason advised the attorneys that they should submit monthly bills and cite the Commission Standards and the county's comprehensive plan when submitting. If payment does not occur, then there could be reimbursement issues. That was the last conversation Mr. Mason had, and to his knowledge, the attorneys had not attempted to submit monthly bills.

Ms. Corley asked whether the county public defender board had been involved in the discussion. Mr. Mason said they have not. Ms. Corley stated that she was not comfortable with the court denying the request for additional information about categories for reimbursement and asked for examples of data not given. Mr. Mason reiterated that the court was not breaking out information about experts and investigators, transcripts, and copies. At the same time, because all the expenses are

lumped under the attorneys, Commission staff can distinguish how much is being paid in public defender fees for this case. Ms. DeWester stated that since Indiana law does not require greater detail, and because the information would be confidential, she did not believe the Commission should insist on greater detail. Mr. Mason said that the Commission does require more data in death penalty cases but not in non-capital cases such as this one. He also noted that a greater level of detail is likely not possible due to the court's gag order.

Ms. Corley asked if the Delphi case fees had been submitted timely, would all the non-attorney expenses have been lumped in with the rest of the county non-attorney expenses, to which Mr. Mason confirmed that they would have been. She then asked if the Carroll County comprehensive plan were due to be updated soon, since it was adopted in 2000. Mr. Mason responded that the county's plan is a relatively simple one, requiring only hourly compensation, so no update is needed. He noted that plans are not always required to be updated at certain times, but the understanding is that if the Commission does update its standards, the latest standards apply, and when counties need to update their plans, the Commission works with them to comply with the Commission's latest standards.

Mr. Mason stated that with the new forms, it is easy to track attorneys who consistently receive cases for which they are not qualified. In Jasper county, despite his lack of qualifications, one attorney has received CHINS and TPR cases for four quarters. The same attorney has started receiving felony cases for which he is not qualified. Mr. Mason recommended sending a 90-day letter to the county warning that the county's reimbursement would be in jeopardy if they county does not bring their assignments into compliance. Ms. DeWester moved to send the letter. Judge Hanlon seconded the motion. There were no objections. The motion carried.

In Warrick County, Mr. Mason said that the Chief has been taking cases for eight quarters in which he is unqualified. The Chief could take a free, digital class offered on demand by the Public Defender Council to become qualified. Mr. Mason again recommended sending a 90-day letter to the county warning that the county's reimbursement would be in jeopardy if the county does not bring their assignments

into compliance. Sen. Taylor asked if this was occurring due to a shortage of public defenders. Mr. Mason answered that there has been no explanation, and that despite warnings and time given to correct the county's assignments, it has continued and it has significantly impacted their reimbursement since it reduces the payment to their Chief.

Judge Hanlon clarified that it is not an onerous training process; it is a six-hour training. Mr. Mason agreed. Sen. Taylor asked if the trainings are recorded and available any time, and Mr. Mason stated that they are. Ms. Corley affirmed that they are available on demand. Sen. Taylor recommended sending a letter asking why the county has not certified their attorneys. It was clarified that every quarter the Commission has contacted the county about this issue and has received assurances that the problem is being addressed, yet nothing has been done. Ms. DeWester moved to send a 90-day letter to the county. Mr. Hensel seconded the motion. There were no objections. The motion carried.

c. Individual and Multi-County Compliance Updates

Mr. Mason observed that 96% of the counties were in caseload compliance, which was excellent. Nevertheless, with new standards taking effect January 1, 2024, he did not expect that level of compliance to continue. Counties have been sent new forms and for the last two years, have seen what their compliance levels would be under the new standards.

Allen County had improved their situation and plan to continue working on caseload compliance. In Floyd County, two of 15 attorneys are out of compliance; it recently adopted an amended comprehensive plan that integrated another court previously excluded. The county asked for patience as it worked through that challenge. Commission staff have been concerned about St. Joe's 2024 compliance. It has several attorneys out of compliance who were not before; it seems the county is shuffling compliance. But the county seems to have a plan, so Mr. Mason recommended patience.

Mr. Mason called the Commission's attention to a few additional multi-county issues. Most seemed to be resolving. Nevertheless, Calvin Miller carried a 137%-caseload between six counties. A second attorney is out of compliance for the first time in four of those counties. Mr. Mason recommended that the six counties who contract with Mr. Miller be sent 90-day letters, and that the second attorney issue be addressed in the relevant four counties. Judge Hanlon moved to send the letters. Ms. DeWester seconded the motion. There were no objections. The motion carried.

4. Requests for Reimbursement

a. 50% Reimbursement in Death Penalty Cases

Mr. Mason reported there were \$45,756.92 in death penalty requests for which he would be seeking approval for reimbursement (see table below). Included in that amount was \$225 for Marion County, submitted later than the Commission's 120 day Guideline. He explained that the Commission traditionally allows a one-time exception for a late claim, so he recommended approving the claim. He also mentioned that Marion County submitted another request too late to be considered at this meeting, so it will be added to the June meeting agenda. In reviewing the Madison County request, staff found two double-paid bills. He recommended reimbursement for all requests, as adjusted. Ms. DeWester moved to approve the death penalty reimbursement requests. Mr. Hensel seconded the motion. There were no objections. The motion carried.

Reimbursement Requests in Capital Cases
March 27, 2024

COUNTY	DEFENDANT	TOTAL
Madison	Boards	\$24,152.79
Marion	Dorsey	\$106.34
Wayne	Lee	\$21,272.79
TOTAL		\$45,531.92

LATE CLAIMS

Marion	Dorsey	\$225.00
TOTAL		\$45,756.92

b. 40% Reimbursement in Non-Capital Cases

Mr. Mason explained that some counties, such as Carroll, Jackson, Jefferson, and Martin, had various additions due to new information or reductions due to desk audits. The total reimbursement request for the fourth quarter of 2023 was \$8,916,119.67 (see Appendix 1). Ms. Corley moved to approve the reimbursement request. Sen. Taylor seconded the motion. The motion carried unanimously and the reimbursements were approved.

5. Local Public Defender Board Appointments

Mr. Cullen reported that the Commission's appointee to the LaPorte county public defender board expired in the prior quarter. When Commission staff requested nominations or comments, Commission staff received varying comments from local officials regarding the appointment and the operation of the local PD Board. Thus, Commission staff waited to make the appointment while Commission staff, particularly Mr. Mason, met with the new county chief, some board members, and members of the judiciary. After these meetings, Commission staff believe issues have been resolved and improvements have been made. The current appointee was willing to continue to serve on the board, Commission staff recommend that Dale Brown be reappointed. Ms. Corley moved to reappoint Mr. Brown. Rep. Lauer seconded the motion. There were no objections. The motion carried.

6. Legislative & Policy Updates

Mr. Cullen reported the success of the Commission's legislation before the Indiana General Assembly. He started by thanking and praising the work of Sen. Koch. He also recognized the invaluable contributions from Sabra Stevens. He

observed that for several years, the House has passed bills dealing with misdemeanor reimbursement, but the Senate has resisted. This year, however, under Sen. Koch's leadership as well as the support of Senators Bray, Garton, Brown, and Glick, as well as Sen. Taylor and his whole caucus, legislation passed adopting a misdemeanor pilot project. The pilot allows the Commission to pick 12 counties and reimburse them at 40% for misdemeanors for four years. In 2029, the Commission will present a report to the Legislative Council and the State Budget Committee based on specific data points. The Commission will then evaluate whether the program should continue.

Judge Hanlon asked how the counties would be selected. Mr. Mason responded that several counties would like to participate. Commission staff would like to pick some counties with misdemeanor compliance issues to measure before and after impacts. Other factors will include willingness to participate, how accurate the counties are in their reporting, how speedy they are in responding to requests for additional information, how applicable is their data, etc. Mr. Mason would also like to work with the Public Defender Council to develop relevant training for misdemeanor attorneys. Judges must also agree to participate in the program. Finally, Mr. Cullen noted that the Commission has a new revenue source in this bill from fees to defendants, which should be between \$1 and \$3 million. Mr. Mason stated that the Commission's hope is be able to go to the Legislature in 2029 and say that funding misdemeanor reimbursement will cost very little due to the new funding enacted this year.

Mr. Cullen also mentioned Rep. Lauer's problem-solving courts legislation. Rep. Lauer discussed his bill, which added the ability for any county to add problem-solving courts for safe babies, focusing on abused children and moving them to permanent placements as quickly as possible.

Mr. Cullen noted that Rep. Hatcher had joined and thanked her for helping with the conference and joining the compromise. She apologized for joining late, noting confusion about start time and being in a different time zone.

The next big project, Mr. Cullen stated, was addressing the attorney shortage, to which the Commission helped call attention. The Supreme Court is creating a

working group on the project. The goal is to have legislation ready to propose before the next legislative session and, at the very least, have something to present to the new incoming governor for their budget.

11. Update on At-Risk Youth and Family Pilots

Mr. Mason noted that Commission staff expect to present first drafts of Rule 6.1 death penalty standards, as well as life without parole standards along with support staff standards, to the Commission at the June 2024 meeting.

He discussed the Marion County At-Risk Youth Early Intervention pilot program, which has shown to be very successful. The Commission had reduced funding from 100% to 50%, and the program has still continued to show very good results. Next year the program will be fully independent, with the Commission's regular 40% reimbursement.

The Commission has also launched system navigator pilot programs in Monroe, Vigo, and Washington counties. Preliminary results indicate that the programs have reduced case lengths by about a month and allowed children to spend a month less outside their homes. Rep. Lauer asked how many cases were studied. Mr. Mason explained that the studies use control groups, so half the families are in the program and half are in the control group. Dr. Liddell stated that there are a couple hundred cases in Monroe County and about 300 in Vigo County. The Commission is in its third year of funding the system navigator pilots, although the data is for the first two years only.

Additionally, Mr. Mason discussed the "Medical Legal Partnership Pilot" which is a collaboration between Child Advocates and Riley Children's Hospital. The pilot connects social workers at Riley with social workers and attorneys at Child Advocates to identify potentially at-risk children and help to prevent CHINS involvement. The pilot identifies cases and provides legal and social work support. Finally, Mr. Mason noted that Child Advocates is also starting a mediation pilot in CHINS and TPR cases, but the Commission has not yet received data on that program.

Ms. Corley inquired whether Marion County could receive Commission support longer if it has trouble obtaining funding. Mr. Mason responded that there is already an agreement in place for 2025 but that if a need arose, it could be discussed.

Ms. Corley also wondered how the duty to report child abuse was handled in the Riley-Child Advocates program. Mr. Mason stated that he had discussed that issue with the parties when the program began a year ago. The program is for families at risk of DCS involvement, not ones where DCS has already been called; the goal is not to provide a new level of support but to prevent the need for DCS involvement. Mr. Cullen further explained that the money was provided by the Legislature to prevent DCS involvement, but that if there were abuse claims, this program would not be an option. Ms. Corley asked for an example of the type of risk sought to be prevented. Mr. Mason stated that both a social worker and an attorney were involved in this partnership so that the most relevant needs could be addressed.

Judge Hanlon observed that civil legal aid might be interested. Mr. Mason responded that he discussed the possibility with legal aid but they are not working with children or with Riley.

12. Other Matters

Ms. DeWester moved to adjourn the meeting. Judge Hanlon seconded the motion. There were no objections. The meeting was adjourned at 3:18 p.m.

Appendix 1

Fourth Quarter 2023 Requests for Reimbursement in Non-Capital Cases 3/27/24

County	Total Expenditure	Non-reimbursable Adjustment	% Adjusted	Eligible Expenditure	40% Reimbursed	Prior Quarter Adjustment	
Adams	\$125,786.96	\$19,080.17	15.17%	\$106,706.79	\$ 42,682.71		\$
Allen	\$1,382,397.20	\$114,870.84	8.31%	\$1,267,526.36	\$ 507,010.54		\$
Benton	\$40,805.98	\$4,210.85	10.32%	\$36,595.13	\$ 14,638.05		\$
Blackford	\$47,764.00	\$5,754.24	12.05%	\$42,009.76	\$ 16,803.91	\$ (10.00)	\$
Brown	\$64,016.98	\$17,850.70	27.88%	\$46,166.28	\$ 18,466.51		\$
Carroll	\$67,709.82	\$16,892.79	24.95%	\$50,817.03	\$ 20,326.81	\$ 51,934.68	\$
Cass	\$188,803.83	\$26,736.40	14.16%	\$162,067.43	\$ 64,826.97		\$
Clark	\$449,188.37	\$25,001.89	5.57%	\$424,186.48	\$ 169,674.59		\$
Clinton	\$95,647.11	\$32,637.63	34.12%	\$63,009.48	\$ 25,203.79		\$
Crawford	\$37,500.00	\$6,310.87	16.83%	\$31,189.13	\$ 12,475.65		\$
Decatur	\$119,753.83	\$27,450.05	22.92%	\$92,303.78	\$ 36,921.51		\$
DeKalb	\$268,797.97	\$22,958.95	8.54%	\$245,839.02	\$ 98,335.61		\$
Delaware	\$475,430.83	\$9,219.43	1.94%	\$466,211.40	\$ 186,484.56		\$
Elkhart	\$1,002,786.05	\$122,567.93	12.22%	\$880,218.12	\$ 352,087.25		\$
Fayette	\$103,795.80	\$18,879.36	18.19%	\$84,916.44	\$ 33,966.58		\$
Floyd	\$333,966.56	\$43,122.75	12.91%	\$290,843.81	\$ 116,337.53		\$
Fulton	\$88,930.15	\$29,135.85	32.76%	\$59,794.30	\$ 23,917.72		\$
Gibson	\$205,119.22	\$21,304.14	10.39%	\$183,815.08	\$ 73,526.03		\$
Grant	\$253,708.92	\$2,859.31	1.13%	\$250,849.61	\$ 100,339.85		\$
Greene	\$177,761.75	\$28,105.17	15.81%	\$149,656.58	\$ 59,862.63		\$
Hancock	\$274,627.15	\$16,956.13	6.17%	\$257,671.02	\$ 103,068.41		\$
Harrison	\$187,478.93	\$23,224.73	12.39%	\$164,254.20	\$ 65,701.68		\$
Hendricks	\$534,514.31	\$100,121.73	18.73%	\$434,392.58	\$ 173,757.03		\$
Howard	\$485,422.41	\$40,769.42	8.40%	\$444,652.99	\$ 177,861.19		\$
Jackson	\$267,219.04	\$13,066.62	4.89%	\$254,152.42	\$ 101,660.97	\$ 842.40	\$
Jasper	\$104,641.88	\$34,246.31	32.73%	\$70,395.57	\$ 28,158.23		\$
Jay	\$174,955.05	\$17,099.77	9.77%	\$157,855.28	\$ 63,142.11		\$
Jefferson	\$190,979.79	\$27,263.80	14.28%	\$163,715.99	\$ 65,486.39	\$ 2,624.82	\$
Jennings	\$120,253.92	\$18,569.58	15.44%	\$101,684.34	\$ 40,673.74		\$
Knox	\$229,952.99	\$26,408.75	11.48%	\$203,544.24	\$ 81,417.70		\$
Kosciusko	\$304,447.65	\$112,049.74	36.80%	\$192,397.91	\$ 76,959.17		\$
LaGrange	\$133,226.56	\$33,399.05	25.07%	\$99,827.51	\$ 39,931.00		\$
Lake	\$1,576,079.48	\$7,479.06	0.47%	\$1,568,600.42	\$ 627,440.17		\$
LaPorte	\$337,008.26	\$27,874.69	8.27%	\$309,133.57	\$ 123,653.43		\$
Lawrence	\$305,378.00	\$40,353.90	13.21%	\$265,024.10	\$ 106,009.64		\$
Madison	\$540,433.62	\$17,925.56	3.32%	\$522,508.06	\$ 209,003.22		\$

Marion	\$6,193,514.04	\$667,440.04	10.78%	\$5,526,074.00	\$ 2,210,429.60		\$
Martin	\$73,641.67	\$8,178.43	11.11%	\$65,463.24	\$ 26,185.30	\$ 14,483.44	\$
Miami	\$178,352.88	\$24,099.40	13.51%	\$154,253.48	\$ 61,701.39		\$
Monroe	\$777,445.55	\$113,791.62	14.64%	\$663,653.93	\$ 265,461.57		\$
Noble	\$312,538.66	\$53,861.93	17.23%	\$258,676.73	\$ 103,470.69		\$
Ohio	\$25,403.56	\$3,712.28	14.61%	\$21,691.28	\$ 8,676.51		\$
Orange	\$139,588.95	\$38,690.87	27.72%	\$100,898.08	\$ 40,359.23		\$
Owen	\$105,651.81	\$20,273.23	19.19%	\$85,378.58	\$ 34,151.43		\$
Perry	\$213,260.25	\$57,589.60	27.00%	\$155,670.65	\$ 62,268.26	\$ (42.48)	\$
Pike	\$51,008.53	\$6,255.49	12.26%	\$44,753.04	\$ 17,901.22		\$
Pulaski	\$96,507.96	\$14,658.79	15.19%	\$81,849.17	\$ 32,739.67		\$
Ripley	\$50,502.67	\$14,472.39	28.66%	\$36,030.28	\$ 14,412.11		\$
Rush	\$134,414.72	\$20,200.52	15.03%	\$114,214.20	\$ 45,685.68		\$
Scott	\$192,190.12	\$32,541.53	16.93%	\$159,648.59	\$ 63,859.43		\$
Shelby	\$247,928.56	\$45,029.25	18.16%	\$202,899.31	\$ 81,159.72	\$ (166.80)	\$
Spencer	\$103,595.35	\$13,624.47	13.15%	\$89,970.88	\$ 35,988.35		\$
Steuben	\$170,342.63	\$42,099.98	24.71%	\$128,242.65	\$ 51,297.06		\$
StJoseph	\$835,763.90	\$76,839.75	9.19%	\$758,924.15	\$303,569.66	\$ (54.26)	\$
Sullivan	\$90,134.17	\$28,299.49	31.40%	\$61,834.68	\$ 24,733.87		\$
Switzerland	\$38,223.55	\$4,515.76	11.81%	\$33,707.79	\$ 13,483.11		\$
Tippecanoe	\$1,127,159.61	\$151,480.94	13.44%	\$975,678.67	\$ 390,271.47	\$ (366.36)	\$
Union	\$22,934.30	\$0.00	0.00%	\$22,934.30	\$ 9,173.72		\$
Vanderburgh	\$1,047,794.42	\$65,621.16	6.26%	\$982,173.26	\$ 392,869.31		\$
Vigo	\$832,420.12	\$133,026.63	15.98%	\$699,393.49	\$ 279,757.40		\$
Wabash	\$136,088.65	\$26,762.23	19.67%	\$109,326.42	\$ 43,730.57		\$
Warren	\$16,876.47	\$5,123.44	30.36%	\$11,753.03	\$ 4,701.21		\$
Warrick	\$206,051.64	\$26,641.85	12.93%	\$179,409.79	\$ 71,763.91		\$
Washington	\$132,365.12	\$20,720.69	15.65%	\$111,644.43	\$ 44,657.77		\$
WCIPDO	\$166,332.40	\$29,827.08	17.93%	\$136,505.32	\$ 54,602.13		\$
TOTAL	\$25,014,322.63				\$8,846,874.23	\$69,245.44	

INDIANA PUBLIC DEFENDER COMMISSION

June 12, 2024

2:00 PM

101 West Ohio, 18th Floor, Commission Conference Room
Indianapolis, Indiana 46204

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Ms. Samantha DeWester (remote)
Hon. Mary Ellen Diekhoff (in person)
Rep. Ragen Hatcher (remote)
Mr. David J. Hensel (remote)
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Hon. Steven P. Meyer (in person)
Sen. Gregory G. Taylor (remote)

Members absent:

Ms. Bernice Corley
Hon. Kelsey B. Hanlon

Staff in attendance:

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

Audience members:

Jim Abbs, Noble County Chief Public
Defender and President, Chiefs
Association (remote)
Ethan Basile, PDCOM Intern (remote)
Liam Callan, PDCOM Intern (remote)
Ray Casanova, Marion County Public
Defender Agency (in person)
Birjan Crispin, Legislative Staff, House
of Representatives (in person)
Manveer Dhadwal, PDCOM Intern
(remote)
Gretchen Etling, Vigo County Chief
Public Defender (remote)
Amy Karozos, State Public Defender
(remote)
Sabra Stevens, Hallowell Consulting (in
person)
Emma Yarber, Legislative Staff, House
of Representatives (in person)

At 2 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 March 27, 2024 Meeting

There were no changes to the minutes. Judge Meyer moved to approve the minutes. Ms. DeWester seconded the motion. The minutes were approved unanimously.

2. Approval of Amended Comprehensive Plans

Adams and Delaware Counties submitted amended Comprehensive Plans for approval.

a. Adams County (Formal Chief PD Position & Updated Standards)

Mr. Mason stated that aside from a few scrivener's errors in the text, the updated plan for Adams County was in compliance with the Commission's standards. He recommended that the Adams County plan be approved. Judge Meyer moved to approve the plan with the noted corrections. Judge Diekhoff seconded the motion. The Adams County plan was approved unanimously.

b. Delaware County (Updated Standards & New Standard O)

The primary update that Delaware County made to their plan was to add standards for support staff pay parity. Mr. Mason noted that when drafting their updated plan, the County accidentally deleted language that the Commission had added. Mr. Mason stated that the county had recognized the error and promised to add the language. Mr. Mason recommended approval of the Delaware County plan. Judge Diekhoff moved to approve the plan. Mr. Hensel seconded the motion. The Delaware 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. He noted that, in the current report, the fourth quarter reimbursement tier was absent.

4. FY25 Internal Budget Approval

Mr. Mason presented the proposed budget for the Commission for fiscal year 2025. The budgetary decrease in office supplies and contracts, among other expenses, was due to the Commission's move to a new office. The budget included a rental increase because the eight-month period of free rent at the Commission's new office location was expiring. He noted that most other expenses were flat. Other increases in the budget were for projected adjustments for staff payroll and benefits that were estimated to increase in the coming fiscal year. Mr. Rutherford noted that on July 1, the Commission's name was going to change to the Commission on Court Appointed Attorneys. Mr. Mason stated that the presented budget was less than 4% of the Commission's total operating budget and that over 96% of the total budget was still set to go back to the counties.

Mr. Mason stated that, due to recent legislative changes, the Commission will now start receiving new revenue from state courts due to changes in public defense fees. How much money is uncertain, however, so the new revenue was unlisted in the presented budget. The first payment from the fees to the Commission from the Comptroller was expected December 2024, with the second in June 2025. He noted that because the December payment would only reflect four months of payment, a more accurate estimation of the new revenue would come in June 2025. Judge Meyer inquired from where the new revenue is coming. Mr. Mason explained that because of a statute enacted in the 2024 legislative session, there has been an increase in the public defender fees. The public defense user fees of \$50 for misdemeanors and \$100 for felonies have increased to \$100 and \$200, respectively. The increased amount was to go to the Commission. The Commission was working with the Office of Judicial Administration (OJA) to add new fields enabling transfer of the new funds through Odyssey. The most important measure, however, was training the clerks and court reporters to enter the new public defense fees correctly. All other fees above the \$100 and \$200 amounts were now optional under the statute. Mr. Mason expressed the hope that if courts assess a fee in excess of \$200, the courts will assess the statutory fee of \$200 (if it is a felony) as part of that.

Judge Meyer stated that in his county, the common thought is that the fees would go to the general fund and would not always reach the line item. Mr. Mason clarified that statutorily, the fees will go into the Commission's supplemental fund, not the general fund. The Commission has recently started to regularly audit the supplemental funds. Judge Meyer inquired whether the supplemental fund first went to the state and then eventually to the Commission, and not to the county public defender offices. Mr. Mason responded that the supplemental fund should not be changed by the statute because even though the fee has been doubled, only the *increase* in the fee is going to the Commission. The county funds are still prioritized; the county first must collect the \$50 or \$100 fee before any fees come to the Commission. The way Odyssey works, all other fees are also prioritized. Mr. Cullen stated that the Commission's staff was very careful during the legislative process to prioritize counties in the bill; all fees that stay local are unchanged.

Mr. Hensel requested that during subsequent meetings the Commission members receive an overview report of what funds are in the supplemental fund and how and how often that money is used. Mr. Mason responded that county clerks are required to provide an annual report to the Commission of deposits and transfers into the supplemental fund related to the public defense user fees. These reports should give the Commission a better idea of whether the counties are using the new fees and collecting money on them. On behalf of the clerks, the OJA will pull that data and file the report with the Commission. The Commission may be able to get more than just the information that the Commission already has. He also reiterated that the Commission has just started to audit the supplemental fund. He estimated that around \$3 million dollars annually is generated in the supplemental fund around the state.

Judge Meyer moved to approve the budget. Sen. Taylor seconded the motion. The budget was approved unanimously.

5. Status of County Compliance

a. 90-Day Update: Warrick, Jasper, Crawford, Martin, Knox, Orange, Perry, & Pike County

Mr. Mason noted that, following the March 27 meeting, he prepared the most 90-day letters that he has ever sent due to many multi-county noncompliance issues. Letters were sent to Warrick and Jasper counties because those counties continually assigned unqualified attorneys. The counties have since verified those attorneys are qualified. Because the issue has been resolved, Mr. Mason recommended that reimbursement should proceed.

Mr. Mason also reminded the Commission about the 90-day letters sent to Crawford, Martin, Knox, Orange, Perry, and Pike counties. In the first five counties, defender Nicholas Siler is noncompliant with 120.3% of a full-time caseload, while in all six counties defender Calvin Miller is noncompliant with 137.2% of a full-time caseload. Siler's and Miller's caseloads have not significantly fallen, but the majority of those counties have promised not to assign more cases to Mr. Siler and Mr. Miller. Mr. Mason stated that the problem was that by the time that the counties received the 90-day letter and started taking action to rectify the issue, the quarter was essentially over. It will take time to ensure the counties are following through on their promise, but if they do so the issue would be rectified. He recommended that reimbursement be approved.

b. Other County Updates: Pay Parity and Marion County

Mr. Mason stated that the Marion County update was included on the agenda as a placeholder due to potential support staff pay parity issues. He understood that the county had come to an agreement to try to resolve their support staff pay parity issue over the next 90 days. The county asked the Commission to potentially consider a 90-day letter for noncompliance if the county has not resolved the issue by then. Mr. Mason noted that the county has been making regular progress, and so he personally thought that it would be appropriate to give the county the extra 90 days to come into compliance at the September meeting.

Mr. Mason stated that, regarding pay parity audits, the Commission has been doing biannual pay parity audits. Many counties will be bumped to an annual pay parity audit due to significant issues across many counties. Many of the counties have

already started addressing their pay parity issues and fixing salaries or contract amounts. But he predicted that it was likely that at the September and December meetings the Commission would need to send more 90-day letters.

Sen. Taylor expressed a concern that this timetable would not serve the counties, who would already have submitted their budgets for approval. Mr. Casanova clarified that Marion County was submitting its budget in August, with final approval later in the fall. Mr. Mason also noted that Marion County's resolution is effective immediately. Additionally, Marion County is amending its current budget, and therefore it does not need to pass a new one.

Mr. Casanova added that the agency has obtained pay parity for about two-thirds of its support staff. The current issue is with the investigators and social workers, and he believes progress is being made. He stated that because Marion County's public defender office is unionized, there were some issues with the union, but those issues have been resolved.

c. Individual and Multi-County Compliance Updates

Mr. Mason stated that, overall, there was good news. Regarding the Stanley Campbell multi-county compliance issue with Allen and LaGrange Counties, attorney Stanley Campbell is going to be resigning from LaGrange County, which should resolve the third quarter of issues in LaGrange County. Allen County continues to have the same attorney out of compliance due to an overloaded caseload. He stated that the county has kept promising to start assigning attorneys differently in their juvenile delinquency court. He noted that the noncompliant attorney has been working the court the day that the majority of case assignments happen, and that the court keeps giving the cases to him. He recommended not sending a 90-day letter to Allen County, but instead giving the county another quarter to come into compliance. Mr. Mason stated that Jefferson County has been working to refresh the way that they have been appointing a noncompliant attorney. He recommended giving Jefferson County another quarter to make sure that Jefferson County has accomplished their new way of appointing attorneys.

Mr. Mason stated St. Joseph County is still significantly noncompliant. He reminded the Commission that this was the first quarter that the Commission implemented its new caseload standards, after giving counties two years' notice of the change and showing them what their current compliance was in 2024 and what their compliance has been from 2022-2024. The Commission had agreed to only report those attorneys, even if they are substantially out of compliance across their four quarters, if they were quarterly noncompliant—that is, not on track to be compliant by the end of 2024. St. Joseph County has indicated that the county is fully staffed, has had two retirements, and has created one new full-time position. But Mr. Mason stated that although he was not convinced it was going to resolve the county's issues, he was willing to give St. Joseph County another 90 days to come into compliance. St. Joseph has had compliance issues in the past, which it has previously tried to resolve by shuffling assignments. He did not recommend 90-day letters for any other county.

Sen. Taylor inquired about the 11 of 34 attorneys in St. Joseph County who were out of compliance. Mr. Mason stated that the attorneys who have been out of compliance have been constantly shifting. Sen. Taylor asked if this meant that the Commission would thus see the same thing at its next meeting. Mr. Mason responded that the county believes that they are fully adequately staffed and that this will fix the issue. But by the Commission's estimates and numbers, the Commission is not convinced that the county will fix the compliance issues. He stated that it was difficult to say until the after the Commission sees the second quarter numbers.

Mr. Rutherford inquired as to whether Allen County's and St. Joseph County's efforts to come into compliance is the reason that a 90-day letter may or may not be necessary. Mr. Mason responded that Allen County's chief public defender has not responded to him about why the county has not increased compliance with the one attorney. The county has indicated that they are working with the juvenile judge to improve compliance. But Mr. Mason noted that the third quarter showed a flat noncompliance, meaning that the noncompliance is neither becoming worse nor improving. Therefore, the Commission could send a 90-day letter. While the county says that they are still working on the issue, he doesn't think that their efforts will

resolve it. St. Joseph has proactively said that their efforts will fix the issue, but it is up to the Commission to believe that. He opined that while it is not impossible for St. Joseph County to fix its compliance issues, it would be very tight if it did so.

The Commission elected not to send any 90-day letters at this time.

6. Requests for Reimbursement

a. 50% Reimbursement in Death Penalty Cases

Mr. Mason reported that there were \$58,227.19 in death penalty requests for which he would be seeking approval for reimbursement (see table below). He recommended reimbursement for all requests, as adjusted. Judge Meyer moved to approve the death penalty reimbursement requests. Judge Diekhoff seconded the motion. There were no objections. The motion carried.

Reimbursement Requests in Capital Cases

June 12, 2024

COUNTY	DEFENDANT	TOTAL
Marion	Mitchell	\$254.75
Wayne	Lee	\$57,972.44
TOTAL		\$58,227.19

b. 40% Reimbursement in Non-Capital Cases

Mr. Mason reported that the total reimbursement request for the first quarter of 2024 was \$9,977,104.63 (see Appendix 1). Sen. Taylor moved to approve the reimbursement request. Mr. Hensel seconded the motion. The motion carried unanimously and the reimbursements were approved. Mr. Hensel requested that the Commission receive a historical record of the last 20 years of 40% reimbursements. He stated that he has noticed the number going up and knew that counties have been joining over the years. Mr. Mason agreed, and he stated that on the Commission's website, there is a record of every quarter of reimbursements for the last few years, a

record of every year of non-capital reimbursements by county since 1996, and a record of every year of capital reimbursements since the early 1990s.

7. Death Penalty (CR 6.1) Update Recommendations

Mr. Mason reminded the Commission that at the last September meeting, the Commission approved a recommendation asking the Indiana Supreme Court to change attorney compensation in death penalty cases to allow the public defender's compensation to adjust with the life of the case. Presently, the public defender's compensation is "locked-in" at the date the death penalty is filed until the case is sent back for appeal or otherwise refiled. Mr. Mason noted that most judges do not know that compensation is "locked-in," as the rule is difficult to read. The Commission also approved a recommendation that the Commission work with the Indiana Public Defender Council to overhaul the entire death penalty rule (Criminal Rule 6.1). The Commission's vote is a recommendation, because by statute, the Supreme Court creates and amends rules. By statute, the Commission is tasked with advising the Supreme Court on the appointment of death penalty representation. Referring to the copy of CR 6.1 distributed to the members at the meeting, the recommended changes from both the Council's subcommittee (in blue) and the Council's Board (in red) were enumerated. Mr. Mason reviewed some key summaries of proposed changes.

The change to 6.1(A) requires that the Commission, the Council, and IPAC all receive notice of a death penalty filing. Mr. Mason stated that the biggest change in CR 6.1 was in section (B). The original rule provided that in counties with no chief public defender, trial judges appoint the public defenders in death penalty cases. The modified rule shifted the duty of appointing the public defenders in those counties with no chief public defender from the trial judge to the Public Defender Council. The modified rule also changed the language for the number of attorneys on a death penalty case defense team from "two" to "no fewer than two." Mr. Mason expressed concern that the new language would allow a state agency to appoint as many attorneys to a case as it wanted and that the county and judge would then be obligated to make such an order and pay the related expenses. Mr. Mason stated that

he was not invited to the meeting where the Public Defender Council's Board voted on the final changes but the subcommittee chair told him the Board was worried about judges appointing the attorneys. Mr. Mason expressed doubt that the Supreme Court would take the Board's proposed change seriously. He recommended letting judges retain appointment authority if there is no chief public defender.

After Mr. Rutherford opened the topic for discussion, Mr. Mason clarified that the Commission would be deciding what language to send out for public comment, not the final recommended language sent to the Supreme Court. Mr. Mason was uncertain how much public comment the changes would generate because the change would not impact many attorneys.

Mr. Mason stated that the general qualifications in 6.1(B)(1) were changed to align with the practices of other states by adding language following ABA standards. The changes to 6.1(B)(2) would likely make it harder to qualify as a death penalty attorney. The changes recommend requiring "no fewer than two cases where the death penalty experience was sought." The next change provided that the cases used to qualify as a death penalty attorney must include a level 5 felony charge or greater, and that one of the cases must be a serious violent felony tried to completion within the previous ten years of appointment. (The previous language only provided for "no fewer than five felony jury trials.") This language was mirrored in the co-counsel qualifications. The subcommittee also increased the required CLE from 12 hours to 18 hours. The CLE timeline remained the same for both lead and co-counsel.

Mr. Mason moved on to the section regarding the defense team. He stated that this section was completely new. He and Mr. Falk did a survey of state death penalty standards across the United States. He subsequently advised the subcommittee on what other states had incorporated defense teams into their qualification standards. A section outlining the required defense team participants was something that almost every other state has in its standards. Mr. Mason expressed that he felt such a section was important to include. Judge Meyer inquired whether different roles on the defense team can be fulfilled by the same person on the team. Mr. Mason affirmed it was possible that if a person met both qualifications, they could satisfy both roles.

In the section concerning workload of counsel, Mr. Mason noted several changes. There was a concern about attorneys taking a death penalty case and then contracting with another county. The proposed change disallows working on more than two capital cases at one time (down from three). The change also disallows any other open felony public defense cases while there are two capital cases pending; if there is only one capital case pending, the public defender is restricted to up to twenty open felony public defense cases. The change also provides that an attorney cannot have a public or private jury trial within 30 days of a capital public defense case, up from 15 days. Mr. Mason noted that the section on workload and full-time salary is eliminated. The changes also would require that both an attorney's public and private workload be considered when making an appointment.

Mr. Mason stated that the changes made to the compensation section were mostly meant for clarification. One change clarifies that if counsel is appointed to a death penalty case in a county where he/she already has contract services, their compensation may be adjusted on the contract to account for restrictions imposed due to the appointment in a death penalty case. The biggest changes in the salaried public defenders' sections were how the salaries are approved by OJA. He noted that the current rule is not followed by Marion County, which approves of the change.

In the appellate counsel section, he noted that two attorneys must be appointed to a death penalty appeal (up from one) and the resulting new co-counsel section. The number of required appeals in the qualifications was raised to "no fewer than ten appeals within the last five years." The post-conviction relief (PCR) standards were drafted by the State Public Defender (SPD), which handles PCRs. The SPD recommended the standards for PCR because almost every state has PCR standards.

In discussion, Judge Diekhoff supported the original language in Section (B) that has judges appoint the death penalty attorneys. She stated that if the Council appointed the attorneys, the trial judge would have no control over the costs spent by the county death penalty defense. She noted that the procedural complexity of death penalty cases makes them very expensive.

Sen. Taylor stated that if the same judge who was presiding over the death penalty case also appointed the public defenders, it could lead to impropriety. Judge Diekhoff responded that she appoints outside counsel regularly. Sen. Taylor stated that a death penalty case is a special situation, with special standards and unique rules. He felt there was cause for concern, because the judge would get to choose the attorneys that he or she would hear from in the case. Mr. Casanova agreed with Sen. Taylor, opining that this was the reason why an independent public defender agency was created in Marion County in the first place.

Sen. Taylor asked if there were any members of the Commission whose counties do not have a chief public defender. Rep. Lauer stated that his county does not have a chief and would thus be affected by the change. Mason stated that in death penalty cases in counties without a chief public defender, judges usually consult the Commission for the list it maintains for qualified attorneys under Rule 6.1. Once the judges ascertain whether the attorneys that they are interested in are on the list, they contact the attorneys directly. Judge Diekhoff stated that, even with a chief public defender, she would reach out to the Commission because the Commission's list would likely be more comprehensive than what the county maintains.

Rep. Lauer voiced his opposition to the proposed changes and wondered who on the Council would make the appointment? What if there were not a quorum on the Council? He was concerned that such questions had not been answered and that this change should be seriously vetted. Mr. Mason reiterated that the proposed changes came out of a meeting that he was unable to attend and agreed that Rep. Laurer's concerns were valid because the mechanics and timeline of appointment are unclear. Mr. Mason speculated ways the Council might eliminate or minimize any big gap in appointment but acknowledged that the change does risk a temporal gap.

Sen. Taylor asked whether the Council could contact the Commission like the judges do. Mr. Mason responded that the Council could, but that he anticipated that the Council would instead likely maintain regular contact with capital lawyers as to availability and willingness to be appointed. Mr. Mason said his biggest concern was

under what circumstances the Council would appoint a third or fourth lawyer since the proposed rule contemplates the appointment of more than two attorneys.

Judge Diekhoff reiterated that death penalty cases are expensive and that they can be lucrative for the public defenders involved. Meanwhile, she noted that she as the judge is paid the same regardless of who she appoints, so she has no stake in the case. Instead, her concern would be giving the defendant the best defense attorney possible. She noted that judges know the local attorneys in their county and would know who would provide the best defense. Some capital-qualified attorneys may not be as good in a death penalty case because they don't have experience in the particular court. She echoed Rep. Lauer's concern about the time it might add if the Council appointed counsel, which could make a cumbersome process even more burdensome.

Mr. Cullen stated that questions such as these were part of the reason Commission staff wanted the Commission to review the changes before being sent for public comment. He acknowledged the legitimacy of Rep. Lauer's questions and added that because the Council's Board is elected by public defenders, there may be potential conflict of interest if the Council itself appointed the public defenders to every death penalty case. Mr. Rutherford stated that if the language were sent for public comment, the Commission could add information about how various individuals drafted the proposed changes and that the Commission wanted to receive additional feedback before the Commission made its final recommendation.

Rep. Lauer inquired how the appointments would be made. Sen. Taylor said the same question could be asked of how the judge made their decisions. He stated that some judges are elected, and if they mess up a death penalty case, that may harm their future reelection campaign. But, he noted, different counties choose their judges in different ways. Where judges are not elected, there is little to no accountability for the judge if they mess up a death penalty case. Sen. Taylor clarified that he may, in fact, agree that judges should appoint, but that he would be remiss if he didn't express his concern about the unaccountability of unelected county judges.

Judge Diekhoff asked Mr. Casanova about the appointment procedure in Marion County after the prosecutor has filed a death penalty case. Mr. Casanova

responded that Marion County's public defender office would likely get the case, and so the appointment would fall to Marion County's chief public defender. The chief public defender would then appoint an attorney from Marion County's office. He noted that there were three attorneys in their office who were capital-qualified and the appointment would therefore be limited to those three. Judge Diekhoff asked what would happen if one of those attorneys was conflicted out. Mr. Casanova responded that if there were a conflict, more than likely the office would have to seek outside counsel. He stated that while the office had in-house conflict panels of attorneys, he did not believe that anyone on that panel was capital-qualified. He stated that many of the attorneys who used to take death penalty cases are now retired and have not been replaced. Judge Diekhoff asked if he were conflicted out whether the office, the judge, or both, appointed the counsel. Mr. Casanova responded that he did not know.

Mr. Rutherford again reminded the Commission that the language approved at this meeting would not be the final language, but it would only be sent for public comment. He reiterated that when the final vote arose at the September meeting, it would merely be a recommendation to the Supreme Court, not a final rule.

Mr. Hensel suggested sending out both the original language and the modified language of section (B) for public comment. Mr. Rutherford asked Mr. Hensel if his suggestion was a motion. Mr. Hensel so moved. Judge Diekhoff seconded the motion. Rep. Lauer stated that he would vote against the motion, arguing the modified language should not be sent for public comment. He expressed his concern about having the Council appoint the public defenders. Judge Diekhoff asked what was being sent for public comment. Mr. Mason responded that the current motion was to send both the original 6.1(B) and the revised 6.1(B) for public comment. He affirmed that the judge appointment option would indeed be included in the rule sent for public comment. Judge Meyer expressed his support for everything Judge Diekhoff had said. He stated that while he did not mind sending out the modified language for comment, he was concerned that it was ambiguous how the Council would select the attorneys to appoint. He noted, however, that in the counties that

had a chief public defender, the alternative means of appointment, whether judge or Council, would not happen very often.

Rep. Lauer asked how many counties would be affected by the new rule. Mr. Mason responded that the rule would apply to all counties, not just the counties in the Commission. Rep. Lauer clarified that he was asking how many counties do not have a chief public defender. Mr. Mason responded that he did not know how many did not, but he approximated that anywhere from one-half to two-thirds of counties had a chief public defender. Mr. Cullen stated that he was going to share the proposed rule changes with the Association of Indiana Counties to get state-wide input on the new language. He stated that the Commission was going to make sure to get judicial and local county comment on the changes. Mr. Mason again reiterated that the final rule would ultimately be set by the Indiana Supreme Court. The Commission's recommendation was simply its opinion about what the Supreme Court should adopt. Mr. Rutherford was also concerned about the changed language.

Mr. Hensel's motion was put up to a vote, and Rep. Lauer voted nay. He reiterated that he did not want the changed language to proceed beyond the meeting. Due to ambiguity over the votes, Mr. Rutherford put the motion up to a roll-call vote.

Ms. DeWester—aye

Judge Diekhoff—aye

Rep. Hatcher—aye

Mr. Hensel—aye

Sen. Koch—aye

Rep. Lauer—nay

Judge Meyer—aye

Sen. Taylor—aye

Mr. Rutherford abstained.

The motion carried.

Mr. Mason stated that he wanted to talk with the three judges on the Commission before the September meeting regarding concerns about the changed

rule and about proposed life without parole qualification standards that the Commission was also going to develop and send over to the Supreme Court

8. Local Public Defender Board Appointments

Mr. Cullen reported that there were nine candidates on the list for appointment or reappointment. He stated that the Commission's ideal candidate for appointment was a local attorney who does not practice public defense, a local elected official, or a retired local elected official. Everyone on the list was either a retired elected official, a current elected official, or an attorney. Mr. Mason stated that White County just passed an ordinance creating a public defender board, so that position was new. Once the board is selected, the county will be sending a comprehensive plan to the Commission for approval. Mr. Cullen added that one of the proposed appointees is the White County auditor, who has explicitly expressed her desire to get a comprehensive plan drafted. Sen. Taylor inquired who is appointed to county public defender boards and whether minority leaders receive appointments. Mr. Cullen responded that in most counties, the public defender board consists of three members: one appointed by the Commission (who must be a resident of the county), one appointed by the county juvenile and criminal judges, and one appointed by the county commissioners. Judge Meyer moved to approve the appointments and reappointments. Sen. Taylor seconded the motion. There were no objections. The motion carried.

9. Legislative & Policy Updates

Mr. Cullen stated that after the Commission's successes during the previous session of the General Assembly, he did not anticipate any changes in public defense legislative policy soon. He updated the Commission about the efforts of the Supreme Court-created Commission on Indiana's Legal Future to address the attorney shortage in Indiana. He stated that he and Mr. Mason were invited to one of the workgroups and that they pitched a proposal to create a \$25,000-per-year scholarship for three years of law school, awarded if the student agreed to serve as a deputy prosecutor or

deputy public defender. The proposal was adopted by the workgroup. Mr. Cullen reminded the Commission about the news article he gave them about the Commission's work last legislative session.

Sen. Taylor stated that he serves on the Pathways to Admission and Education subcommittee. He noted his observations of how much the legal profession has changed since he took the bar exam and the resulting generation gap between attorneys who graduated in the 1990s and those who are graduating in 2024. He expressed his desire to speak to a newly licensed attorney about changes in the bar exam and in law school admissions. Mr. Cullen stated that, in his and Mr. Mason's scholarship proposal, there was a provision requiring that if there is an Indiana pathway at Indiana law schools, a student must be on that pathway to receive the scholarship.

Judge Meyer inquired whether counties in the misdemeanor pilot program have been selected. Mr. Mason responded that the Commission is in a holding pattern because for counties to participate in the reimbursement program, by statute, each county needs to have an indigency form that every court in the county follows. He stated that the selection process for the pilot program will not happen until late fall 2024 or early in 2025 when the OJA finishes working on the form. The form will allow the counties to know what they are committing to if participating in the pilot program. Judge Meyer said that anecdotally, there has been a lot of pushback on the form. Mr. Cullen stated that the pushback was likely due to incorrect information in part stating that all judges would have to use the new form all the time. He stated that while judges were under no obligation to use the form, however if they did not use it, that judge's county could not participate in the pilot program.

10. Other Matters

Sen. Taylor moved to adjourn the meeting. There were no objections. The meeting was adjourned at 3:38 p.m.

Appendix 1

First Quarter 2024 Requests for Reimbursement in Non-Capital Cases 6/12/24

County	Total Expenditure	Non- reimbursable Adjustment	% Adjusted	Eligible Expenditure	40% Reimbursed	Prior Quarter Adjustment	Total Payment
Adams	\$139,652.55	\$22,898.13	16.40%	\$116,754.42	\$ 46,701.77		\$ 46,701.77
Allen	\$1,277,574.55	\$97,627.01	7.64%	\$1,179,947.54	\$ 471,979.02		\$ 471,979.02
Benton	\$38,358.30	\$7,310.21	19.06%	\$31,048.09	\$ 12,419.24		\$ 12,419.24
Blackford	\$27,065.25	\$2,769.17	10.23%	\$24,296.08	\$ 9,718.43		\$ 9,718.43
Brown	\$52,166.84	\$12,911.45	24.75%	\$39,255.39	\$ 15,702.16		\$ 15,702.16
Carroll	\$199,288.11	\$24,927.50	12.51%	\$174,360.61	\$ 69,744.25	\$ 1,574.98	\$ 71,319.23
Cass	\$206,917.00	\$25,611.47	12.38%	\$181,305.53	\$ 72,522.21		\$ 72,522.21
Clark	\$522,752.95	\$43,609.78	8.34%	\$479,143.17	\$ 191,657.27		\$ 191,657.27
Clinton	\$75,565.62	\$9,208.25	12.19%	\$66,357.37	\$ 26,542.95		\$ 26,542.95
Crawford	\$39,440.85	\$2,121.05	5.38%	\$37,319.80	\$ 14,927.92		\$ 14,927.92
Decatur	\$144,739.11	\$29,960.83	20.70%	\$114,778.28	\$ 45,911.31		\$ 45,911.31
DeKalb	\$271,871.46	\$20,451.01	7.52%	\$251,420.45	\$ 100,568.18		\$ 100,568.18
Delaware	\$513,894.75	\$7,213.29	1.40%	\$506,681.46	\$ 202,672.58		\$ 202,672.58
Elkhart	\$1,015,748.26	\$115,496.80	11.37%	\$900,251.46	\$ 360,100.58		\$ 360,100.58
Fayette	\$113,718.48	\$20,194.97	17.76%	\$93,523.51	\$ 37,409.40		\$ 37,409.40
Floyd	\$378,371.40	\$46,409.86	12.27%	\$331,961.54	\$ 132,784.62		\$ 132,784.62
Fulton	\$89,249.04	\$34,178.02	38.30%	\$55,071.02	\$ 22,028.41		\$ 22,028.41
Gibson	\$198,193.81	\$27,907.08	14.08%	\$170,286.73	\$ 68,114.69		\$ 68,114.69
Grant	\$315,058.19	\$25,997.29	8.25%	\$289,060.90	\$ 115,624.36		\$ 115,624.36
Greene	\$217,428.36	\$33,163.07	15.25%	\$184,265.29	\$ 73,706.12		\$ 73,706.12
Hancock	\$263,531.41	\$26,020.46	9.87%	\$237,510.95	\$ 95,004.38		\$ 95,004.38
Harrison	\$179,907.25	\$23,051.33	12.81%	\$156,855.92	\$ 62,742.37		\$ 62,742.37
Hendricks	\$544,207.52	\$76,926.83	14.14%	\$467,280.69	\$ 186,912.28	\$ (163.30)	\$ 186,748.98
Howard	\$579,259.71	\$41,882.08	7.23%	\$537,377.63	\$ 214,951.05		\$ 214,951.05
Jackson	\$271,316.42	\$14,385.66	5.30%	\$256,930.76	\$ 102,772.31		\$ 102,772.31
Jasper	\$66,394.55	\$20,185.63	30.40%	\$46,208.92	\$ 18,483.57		\$ 18,483.57
Jay	\$153,624.09	\$15,623.12	10.17%	\$138,000.97	\$ 55,200.39		\$ 55,200.39
Jefferson	\$184,849.23	\$33,609.34	18.18%	\$151,239.89	\$ 60,495.95		\$ 60,495.95
Jennings	\$129,180.00	\$9,562.40	7.40%	\$119,617.60	\$ 47,847.04		\$ 47,847.04
Knox	\$251,794.23	\$34,839.82	13.84%	\$216,954.41	\$ 86,781.76		\$ 86,781.76
Kosciusko	\$316,063.85	\$124,683.78	39.45%	\$191,380.07	\$ 76,552.03		\$ 76,552.03
LaGrange	\$90,732.30	\$16,758.12	18.47%	\$73,974.18	\$ 29,589.67		\$ 29,589.67
Lake	\$1,772,950.91	\$8,580.18	0.48%	\$1,764,370.73	\$ 705,748.29		\$ 705,748.29
LaPorte	\$345,516.14	\$25,164.69	7.28%	\$320,351.45	\$ 128,140.58		\$ 128,140.58
Lawrence	\$336,158.70	\$47,749.84	14.20%	\$288,408.86	\$ 115,363.55		\$ 115,363.55
Madison	\$612,463.91	\$24,698.95	4.03%	\$587,764.96	\$ 235,105.98		\$ 235,105.98
Marion	\$8,345,690.52	\$895,111.13	10.73%	\$7,450,579.38	\$ 2,980,231.75		\$ 2,980,231.75
Martin	\$41,510.62	\$6,992.12	16.84%	\$34,518.50	\$ 13,807.40		\$ 13,807.40
Miami	\$204,620.49	\$27,789.48	13.58%	\$176,831.01	\$ 70,732.40		\$ 70,732.40
Monroe	\$735,306.62	\$109,818.18	14.94%	\$625,488.44	\$ 250,195.38		\$ 250,195.38
Noble	\$328,726.92	\$56,247.30	17.11%	\$272,479.62	\$ 108,991.85		\$ 108,991.85
Ohio	\$53,805.20	\$11,415.29	21.22%	\$42,389.91	\$ 16,955.96		\$ 16,955.96
Orange	\$104,567.21	\$19,135.69	18.30%	\$85,431.52	\$ 34,172.61		\$ 34,172.61
Owen	\$70,801.31	\$12,740.53	17.99%	\$58,060.78	\$ 23,224.31		\$ 23,224.31

Perry	\$148,092.26	\$11,333.32	7.65%	\$136,758.94	\$	54,703.57		\$	54,703.57	
Pike	\$43,546.40	\$2,461.00	5.65%	\$41,085.40	\$	16,434.16		\$	16,434.16	
Pulaski	\$103,642.95	\$23,857.42	23.02%	\$79,785.53	\$	31,914.21		\$	31,914.21	
Ripley	\$47,368.31	\$12,607.54	26.62%	\$34,760.77	\$	13,904.31		\$	13,904.31	
Rush	\$133,511.30	\$21,672.55	16.23%	\$111,838.75	\$	44,735.50		\$	44,735.50	
Scott	\$110,397.88	\$16,354.21	14.81%	\$94,043.67	\$	37,617.47		\$	37,617.47	
Shelby	\$177,145.93	\$32,703.44	18.46%	\$144,442.49	\$	57,777.00		\$	57,777.00	
Spencer	\$142,479.66	\$7,533.52	5.29%	\$134,946.14	\$	53,978.46		\$	53,978.46	
Steuben	\$135,613.12	\$36,806.69	27.14%	\$98,806.43	\$	39,522.57		\$	39,522.57	
StJoseph	\$873,079.13	\$66,438.53	7.61%	\$806,640.60	\$	322,656.24		\$	322,656.24	
Sullivan	\$67,088.91	\$11,543.52	17.21%	\$55,545.39	\$	22,218.15		\$	22,218.15	
Switzerland	\$39,641.50	\$10,405.16	26.25%	\$29,236.34	\$	11,694.54		\$	11,694.54	
Tippecanoe	\$1,172,713.65	\$169,181.59	14.43%	\$1,003,532.06	\$	401,412.82		\$	401,412.82	
Union	\$18,095.00	\$2,525.95	13.96%	\$15,569.05	\$	6,227.62		\$	6,227.62	
Vanderburgh	\$1,155,879.45	\$61,955.56	5.36%	\$1,093,923.89	\$	437,569.56	\$	7,722.50	\$	445,292.06
Vigo	\$1,019,061.80	\$154,442.75	15.16%	\$864,619.05	\$	345,847.62	\$	-	\$	345,847.62
Wabash	\$154,774.22	\$35,063.63	22.65%	\$119,710.59	\$	47,884.24		\$	47,884.24	
Warren	\$21,765.46	\$2,979.20	13.69%	\$18,786.26	\$	7,514.50		\$	7,514.50	
Warrick	\$165,220.30	\$10,984.14	6.65%	\$154,236.16	\$	61,694.46		\$	61,694.46	
Washington	\$211,002.67	\$33,938.77	16.08%	\$177,063.90	\$	70,825.56		\$	70,825.56	
WCIPDO	\$198,980.92	\$21,482.02	10.80%	\$177,498.90	\$	70,999.56		\$	70,999.56	
TOTAL	\$27,959,134.81			\$24,919,926.10	\$9,967,970.45	\$9,134.18			\$9,977,104.63	

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. Hensel 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

INDIANA COMMISSION ON COURT APPOINTED ATTORNEYS

December 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)
Mr. James J. Abbs (in person)
Ms. Bernice Corley (in person)
Hon. Mary Ellen Diekhoff (remote)
Hon. Kelsey B. Hanlon (in person)
Mr. David J. Hensel (remote)
Rep. Ryan Lauer (in person)

Members absent:

Ms. Samantha DeWester
Rep. Ragen Hatcher
Sen. Eric Koch
Sen. Gregory G. Taylor

Staff in attendance:

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

Audience members:

Hon. Stephanie Campbell, Fountain
Circuit Court (remote)
Ray Casanova, Marion County Chief
Public Defender (in person)
Janice Conley, Office Manager,
Hancock County Public Defender
Agency (remote)
Gretchen Etling, Vigo County Chief
Public Defender (remote)
Amy Karozos, State Public Defender
(remote)
Michael Moore, Public Defender
Council (remote)
Michael Slagle, WCIPDO Chief Public
Defender (remote)

At 2:02 p.m., Chair Mark Rutherford called the meeting to order. Introductions were made and a quorum was present to conduct business.

1. Approval of Minutes of the September 18, 2024, Meeting

The Chair noted a minor correction to the minutes. Ms. Corley moved to approve the minutes; Mr. Abbs seconded the motion. Judge Hanlon abstained. The minutes were approved as corrected.

2. Approval of New & Amended Comprehensive Plans

a. Grant County (Replace Managing PD w/ Office & Full-Time Chief)

Mr. Mason stated that Grant County has had a quasi-office and a managing public defender for a long time. The amended plan creates a full office and a full-time chief public defender. The county also included Standard O in the amended plan.

Ms. Corley asked if the county had funding for a chief deputy. Mr. Mason stated that he believes that they do not yet have funding for that position. Judge Hanlon moved to approve the amended plan. Ms. Corley seconded the motion. The Grant County plan was approved unanimously.

b. Jefferson County (Creation of Office w/ Full-Time Chief)

Mr. Mason stated that their plan would be effective January 1, 2025. The rule is the comprehensive plan must be approved by the quarter in which a county seeks reimbursement under that plan, but the Commission may approve plans in advance. Jefferson County's challenge is that they acknowledge there is a significant attorney shortage in their corner of the state, and they want to hire a full-time Chief. The issue is that the person the county wants to hire is currently a part-time public defender for Jefferson County *and* has a public defender in Switzerland County. Mr. Mason stated that Commission staff would contact a judge in Switzerland County about the possibility of a regional plan. Mr. Mason said that adding a chief as the amended plan provides is a good move for the county. He further noted that the comprehensive plan includes Standard O, even though they do not yet have staff.

Mr. Abbs moved to approve the amended comprehensive plan. Judge Diekhoff seconded the motion. The Jefferson County plan was approved unanimously.

c. Hancock County (Adds Chief Deputy Position & Standard O)

Mr. Mason stated that Hancock County already has an office. The amended plan adds a chief deputy position and Standard O. Mr. Mason indicated that the county needs to add a pay parity provision for the deputy chief under paragraph 3. He recommended approval contingent upon the addition of a pay parity provision for the chief deputy position.

Ms. Corley moved to approve the amended comprehensive plan with a chief deputy pay parity provision added. Mr. Abbs seconded the motion. The Hancock County plan was approved unanimously.

Rep. Lauer joined the meeting.

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. He noted that there have been staffing issues at the Department of Child Services (DCS) that have prevented the finalization of grants and payments for Title IV-E. After Budget verifies actual payment amounts, the Commission will use its own funds to provide what DCS should have paid and will eventually be reimbursed once the Commission receives funding from DCS.

4. Status of County Compliance

Mr. Mason identified caseload compliance issues in several counties. There is a state public defender who has been assigned too many cases in several different counties; State Public Defender Amy Karozos is aware of the problem and Mr. Mason expects that the issue will be resolved, but it will take some time.

Last quarter it was noted that Grant County has had heavy attorney turnover. As a result, Chief Public Defender Bruce Elliot is out of compliance. The county has hired more attorneys, but they need to be trained to receive higher levels of felonies. Commission staff will continue to monitor the situation. He does not recommend a 90-day letter.

Jasper County has had repeated use of unqualified attorneys. Commission staff have addressed the issue, and the problem will cease temporarily, then reoccur. Mr. Mason understands that an outgoing judge has been appointing whoever he wants; once the new judge is in office in January, Mr. Mason hopes the situation can improve. He recommended a 90-day letter to clarify the issue of appointing non-qualified attorneys.

Ms. Corley volunteered to follow up with training. Mr. Mason clarified that part of the problem has been CHINS-related and a flat refusal to participate in the required 6-hour training.

Judge Hanlon asked if there is any type of clearinghouse or listserv where attorneys can learn about opportunities to obtain experience via second chair service. Ms. Corley answered yes, such opportunities are available. It would be helpful to know that certain attorneys are looking for experience.

Rep. Lauer moved to send a 90-day letter to Jasper County. Ms. Corley seconded the motion. The motion carried unanimously.

Mr. Mason noted that Jefferson County has had three consecutive quarters of non-compliance, and the biggest issue is that the county is increasing in its caseload noncompliance. The county has a plan in place, but Mr. Mason is not sure it will be effective. The proposed new chief in Jefferson County is out of compliance regionally, so this is a wider problem. Mr. Mason has not seen a willingness to address the problem. He recommended a 90-day letter that could be useful in promoting positive changes.

Ms. Corley asked if the county knew they could ask the State Public Defender Office (PDO) for help. Mr. Mason answered that they do, but they are mindful of the hourly cost the PDO would be. Ms. Corley moved to send the 90-day letter to Jefferson County. Mr. Abbs seconded the motion. The motion carried unanimously.

Mr. Mason reminded the Commission that St. Joseph County has had attorneys coming into and moving out of compliance such that it seems like a shell game. He has heard that the county public defender has sought to make their chief, chief deputy, and support staff full time, which could resolve the issue, but he has not heard

if the request was approved by county. He recommended sending the county a 90-day letter unless Commission staff learns the request was approved. Judge Hanlon moved to send a 90-day letter to St. Joe County. Judge Diekhoff seconded the motion. The motion carried unanimously.

Mr. Mason stated that a meeting has already been scheduled with the judge in Switzerland County to address regional compliance and possible creation of a regional office with Jefferson County. There was no further discussion on Switzerland County and no action was taken.

5. Requests for Reimbursement

a. 50% Reimbursement in Death Penalty Cases

Mr. Mason recommended approval of the death penalty reimbursement requests. He noted that the Wayne County defendant has died and that this should be their last request for that defendant. Judge Hanlon moved to approve the death penalty reimbursement requests. Mr. Abbs seconded the motion. There were no objections. The motion carried.

Reimbursement Requests in Capital Cases

December 18, 2024

COUNTY	DEFENDANT	TOTAL
Madison	Boards	\$34,681.52
Marion	Mitchell	\$647.23
Wayne	Lee	\$1,749.50
TOTAL		\$37,078.25

b. 40% Reimbursement in Non-Capital Cases

Mr. Mason reported that the total reimbursement request for the third quarter of 2024 was \$10,035,367.19 (see Appendix 1), a new record high. He recognized reductions in Adams County due to a desk audit and in Ripley County due to an amended reimbursement request.

Ms. Corley moved to approve the reimbursement request. Mr. Hensel seconded the motion. The motion carried unanimously, and the reimbursements were approved.

6. Approval of Death Penalty Education & Individual Standard E Request

a. Death Penalty Education

Mr. Mason stated that an attorney requested that the Commission approve the NAPD Darrow Baldus Criminal Defense College as a course that would count toward the 12 CLE hours required for death penalty qualified attorneys. He noted that the College is held over a 5-day period and consists of more than the 12 hours that Rule 6.1 requires. He recommended that the College be added to the approved list of courses.

Mr. Abbs moved to approve the course. Judge Hanlon seconded the motion. The motion carried unanimously.

b. Individual Standard E Request: Jacob Vanderhorst (DeKalb County)

Mr. Mason said that a public defender in DeKalb County, Jacob Vanderhorst, has requested to be approved as murder qualified under Standard E. The Commission has previously held that certified legal intern experience does not count toward the trial completion component of Commission standards. Mr. Vanderhorst has extensive experience as a certified legal intern for two years with the Marion County Prosecutor's Office, including two trials, as well as additional experience. Mr. Mason recommended approval given Mr. Vanderhorst's unique situation with experience in five trials, of which four would be qualifying had he been a licensed attorney, his level of involvement as a certified legal intern, and his years of criminal litigation experience in Marion and DeKalb Counties.

Mr. Abbs agreed that Mr. Vanderhorst's experience was sufficient and believed that an exception should be granted in his case. Ms. Corley moved to grant an

exception for Mr. Vanderhorst. Mr. Abbs seconded the motion. The motion carried unanimously.

7. Local Public Defender Board Appointments

Mr. Cullen recommended the appointment of two individuals—Elaine Sebasian in Decatur County and Kelly Bryan in Delaware County—to new three-year terms on their respective county PD Boards, effective immediately. He also recommended reappointment, with a change in the appointing authority (Commission on Court Appointed Attorneys [CCAA] instead of county appointments) of David Shelton to a three-year term as the CCAA appointee to the Knox County public defender board, effective January 28, 2025, or upon the resignation of the current CCAA appointee to complete that term and serve an additional three-year term; and appoint Steven Blane as the CCAA representative to the West Central Indiana Public Defender Office, effective January 1, 2025, for an additional three-year term.

Judge Hanlon moved to approve the nominations. Judge Diekhoff seconded the motion. The motion carried unanimously.

8. Rule 6.1 Final Proposed Draft & LWOP Submission

a. LWOP Submission

Mr. Mason recalled for the Commission that the Commission decided to ask the Supreme Court to adopt standards for appointments in cases where a sentence of life without parole (LWOP) is sought. If the Supreme Court declined, the Commission could adopt its own standard, but the advantage of a Court standard is that it would apply in every county, not just Commission counties. Mr. Mason stated that an underlying value was making sure the LWOP standard was not so onerous that prosecutors would simply file a death penalty request instead of LWOP, but that the qualifications would be more significant than a standard murder case.

Commission staff, relying on a previous Public Defender Council (IPDC) draft as well as standards from other states, drafted and proposed to submit the following for consideration to the Supreme Court:

- 1) The appointment of no fewer than two qualified attorneys;
- 2) That lead counsel have prior experience in either a death penalty or life without parole case;
- 3) That both attorneys meet the minimum of the Commission's standards to be qualified to handle murder cases (3 years and 3 major felony trials)
- 4) A training component focusing on either LWOP or death penalty cases and perhaps in an amount lesser than required by Rule 6.1;
- 5) Whether counsel should either be salaried in a county with a comprehensive plan approved by the Commission or otherwise paid no less than the Commission's then current non-capital hourly rate.

Mr. Abbs expressed his concern about the lack of qualified attorneys who could meet such requirements, particularly in smaller counties.

Mr. Abbs moved to adopt the staff recommendation but change paragraph 2 to "2) That lead counsel have prior experience in either a death penalty, life without parole, or murder case." Ms. Corley seconded the motion for purposes of discussion. Ms. Corley expressed her support for Mr. Abbs' perspective and stated that she thought the proposed language should be returned to the IPDC work group for revisions. Mr. Mason clarified that the work group does not currently exist; Commission staff simply relied upon old IPDC proposed language in coming up with this current draft, but that work group no longer exists.

Judge Hanlon said she believe the two-attorney requirement is too stringent, and she recommended that the provision requiring a second attorney be optional. Ms. Corley asked what Judge Hanlon's discretionary language would entail.

Mr. Mason said that the Commission could send a request to consider making an LWOP standard without providing the specific language; it could be simply the recommendation bullets as in the provided materials (see above and Appendix 2). The

Commission could state that it would like the Court to evaluate whether these elements of a standard are appropriate without taking a position.

Ms. Corley stated that she likes the current language with Mr. Abbs' amendment. She stated that in the last two months she has received calls from two chief public defenders who have asked where to find the LWOP standards, and people do seem to think there should be specific LWOP standards.

Ms. Corley moved amend the motion, asking the Supreme Court to consider whether the bulleted considerations above are appropriate for a standard for LWOP representation, including Mr. Abbs' addition of "and murder" to paragraph 2, without the Commission endorsing any of them. Mr. Abbs seconded the motion to amend. The motion to amend passed unanimously. The motion on the floor then passed unanimously.

b. Standard 6.1

Mr. Mason explained the elements of the materials provided to the Commission members in the meeting materials: Item A is the text of the proposed draft prepared by the working group (see Appendix 2 below); Item B contains the public comments (provided at the last meeting); and Item C is a letter from the Public Defender Council.

He reminded the Commission that one of the most controversial aspects of the Standard was who had the authority to appoint counsel. He summarized some of the other key changes. He noted that there are two different versions and stated the Commission needs to choose which one to recommend that the Supreme Court adopt.

Ms. Corley asked for clarification as to the two versions. Mr. Mason explained that the Commission itself had not agreed as to who had the authority to appoint death penalty counsel, so he had not taken a position in the working group. The Commission submitted both versions for public comment, but that did not resolve the issue, either.

Ms. Corley stated that the IPDC's chair, Denise Turner, explained the IPDC's position in her letter (Item 3): the Council favors judicial independence, so it believes either the county chief or another entity should appoint counsel. She recognized that that perspective was not widely supported at the last Commission meeting, but she asked for a straw poll to gauge current support. Alternatively, she asked not to have a no-vote against the proposal she favored.

Rep. Lauer stated he supported the second version, which retains judicial appointment and keeps the system the same, and he thinks that system works better.

Mr. Abbs says he likes having judicial independence because it removes the ability for a client when an attorney makes an unpopular decision say, "oh, you're just trying to placate the judge who appointed you."

Mr. Hensel inquired what the argument was in support of the view that the judge should make the appointment. Judge Hanlon said that it could be so that the judge makes sure the attorney is qualified. Mr. Mason stated that in these very expensive cases, some people believe it should be someone local making the selection decision instead of a state agency. Additionally, since the Standard says no fewer than two attorneys, there is a concern that an outside agency could appoint multiple attorneys against the county's wishes.

Rep. Lauer stated that he believes judicial appointments have been practice for some time, he is not aware of any impropriety, and it has elected accountability. He also appreciates the knowledge of local attorneys as well as finances, so favors judicial appointments. He thus moved to send the proposed revisions to Rule 6.1 to the Supreme Court for their consideration, including the second option for Appointment of Qualified Trial Counsel that keeps the appointing authority the same.

Mr. Mason clarified for the Commission its role in making recommendations to the Supreme Court; nothing the Commission does is binding upon the Court. Mr. Hensel asked if this is a suggestion for the Supreme Court, why not give the Court both options? Ms. Corley said she thought that was a good idea. Rep. Lauer stated he did not think the Commission should make that recommendation. Judge Diekhoff stated that she can see both sides; she thinks some judges will really want to make the

appointment. She believes that it's good for a local authority, the chief public defender, to make the appointment. She thinks a Commission appointment would not work so well in some places. She would have a hard time voting for one option over the other, since one option works better in some circumstances and the other works better in other circumstances. "It's all about getting the best representation, but how you do that, it is hard to say." She thinks both options should go to the Supreme Court.

The Chair stated that there is a motion on the table by Rep. Lauer. The Chair asked for a second. Judge Hanlon stated her support for sending both versions to the Supreme Court. The motion failed for a lack of a second. Mr. Hensel moved to send the revised Rule 6.1, including both appointment options, to the Supreme Court. The motion was seconded. Judge Diekhoff asked whether the work group considered keeping judicial appointments but recommending the judge consult with the Commission? Mr. Mason stated that although the work group did not explicitly consider that option, it was suggested in public comment. He also suggested that a third option could be given: the judge would make the appointment from a panel or list of attorneys provided by the Commission if there is no chief public defender.

Ms. Corley moved to make a friendly amendment that would offer a third option, providing that judge would appoint from a list the Commission would provide of qualified and available counsel. Mr. Abbs seconded the amendment. The amendment passed.

9. Legislative & Policy Updates

Mr. Cullen discussed the proposed legislation he is aware of at this point for the upcoming legislative session and recommended CCAA positions.

Law School Scholarships for Prosecutors/Public Defenders (Rep. Stenerwald)

- The bill will provide \$25k/year scholarships to law students in exchange for agreeing to work full time as a deputy prosecutor or PD in Indiana for a minimum of 5 years after passing the bar.
 - Staff Recommendation: Support

Public Defender Participation in the Prosecuting Attorney Retirement Fund (PARF) (Sen. Rogers)

- This bill will be an updated version of HB 1605 from 2023.
- IPAC will also be requesting that an automatic COLA is included in the bill
 - Staff Recommendation: Support

Counsel for Kids in CHINS/TPR Actions (Rep. Olthoff)

- There will be two bills that seek to provide a right to counsel for certain kids in certain CHINS/TPR proceedings.
 - With the attorney shortage, expanding the right to counsel has significant practical as well as fiscal issues.
 - The CCAA's position has been to remain neutral on the policy but to request appropriate additional funding for any new rights to counsel.
 - Staff Recommendation: Support policy; Oppose without funding

Criminal Justice Omnibus Bill (Rep. Jeter)

- The bill will likely contain:
 - New funding to permit a minimum salary of \$100k for full time deputy prosecutors and public defenders.
 - This requires a new \$50 million appropriation for prosecutors and a new \$15 million appropriation to the PD Fund, along with 50% reimbursement authority for non-misdemeanor cases.
 - Clarifying the term expirations for Commission members, to allow for staggering of appointments
- Staff also made a general request that Rep. Jeter include state paid Chiefs PDs and/or Chief Deputies, require statewide CCAA participation, and potentially increase the PD Admin Fee to cover the additional costs. At the time of this report, we are unsure what Rep. Jeter has decided to include in this legislation
- This bill may also include structural issues that may have been discussed by the Commission on Indiana's Legal Future.

- Staff Recommendation: Support the additional funding & staggering of Commission Member terms; Monitor this legislation closely – approve the ED to make decisions on other matters in this bill after consultation with the Chair.

Insurance for “Full-time” Contractual PDs (Rep. Bascom)

- This legislation will allow “full time” contractual PDs to buy into the state’s healthcare system.
 - Staff Recommendation: Support as a lower priority than other funding matters.

CCAA Budget

- Staff requested a flat-lined budget.
 - Staff Recommendation: Seek a restoration of our budget through the legislative process if it is cut by the Introduced Version of HB 1001 by the incoming administration.

Mr. Abbs moved to approve all staff recommendations on the proposed legislation and reiterated that Executive Director Mason, in consultation with the Chair, is authorized to take positions on behalf of the CCAA between meetings. Ms. Corley seconded the motion. Rep. Lauer abstained. The motion carried.

10. Approval of 2025 Quarterly Meeting Dates

Mr. Mason proposed the following Commission meeting dates for 2025:

4Q2024 Reimbursement: March 26, 2025 @ 2 PM

1Q2025 Reimbursement: June 18, 2025 @ 2 PM

2Q2025 Reimbursement: September 24, 2025 @ 2 PM

3Q2025 Reimbursement: December 17, 2025 @ 2 PM

Ms. Corley moved to approve the proposed meeting dates for 2025. Mr. Abbs seconded the motion. Rep. Lauer abstained. The motion carried.

11. Misdemeanor Pilot Update

Mr. Mason stated that about one-third of the Commission counties have applied to be in the pilot program. Commission staff are working to expand the number of counties who are collecting data in exchange for data collection grants. The Commission will select pilot counties at the March meeting.

12. Other Matters

Ms. Corley moved to adjourn the meeting. Judge Hanlon seconded the motion. The motion carried and the meeting was adjourned.

Appendix 1

Commission on Court Appointed Attorneys Non Capital Claims 3Q2024 12/18/24

County	Total Expenditure	Non- reimbursable Adjustment	% Adjusted	Eligible Expenditure	40% Reimbursed
Adams	\$136,887.16	\$32,767.79	23.94%	\$104,119.37	\$41,647.75
Allen	\$1,295,038.05	\$97,030.76	7.49%	\$1,198,007.29	\$479,202.91
Benton	\$43,848.70	\$15,810.58	36.06%	\$28,038.12	\$11,215.25
Blackford	\$78,392.11	\$9,367.62	11.95%	\$69,024.49	\$27,609.80
Brown	\$51,614.87	\$18,087.39	35.04%	\$33,527.48	\$13,410.99
Carroll	\$165,248.98	\$12,276.33	7.43%	\$152,972.65	\$61,189.06
Cass	\$196,560.91	\$26,118.62	13.29%	\$170,442.29	\$68,176.91
Clark	\$485,952.89	\$43,628.62	8.98%	\$442,324.27	\$176,929.71
Clinton	\$74,739.19	\$18,867.20	25.24%	\$55,871.99	\$22,348.79
Crawford	\$43,039.60	\$7,641.51	17.75%	\$35,398.09	\$14,159.24
Decatur	\$135,827.53	\$27,652.44	20.36%	\$108,175.09	\$43,270.04
DeKalb	\$237,383.35	\$19,090.57	8.04%	\$218,292.78	\$87,317.11
Delaware	\$561,451.25	\$2,289.57	0.41%	\$559,161.68	\$223,664.67
Elkhart	\$948,748.86	\$142,070.37	14.97%	\$806,678.49	\$322,671.40
Fayette	\$121,502.36	\$14,594.94	12.01%	\$106,907.42	\$42,762.97
Floyd	\$412,960.10	\$65,279.70	15.81%	\$347,680.40	\$139,072.16
Fulton	\$93,124.87	\$22,607.34	24.28%	\$70,517.53	\$28,207.01
Gibson	\$169,428.06	\$19,443.95	11.48%	\$149,984.11	\$59,993.64
Grant	\$332,309.55	\$7,004.31	2.11%	\$325,305.24	\$130,122.09
Greene	\$177,034.86	\$24,590.47	13.89%	\$152,444.39	\$60,977.76
Hancock	\$262,801.04	\$28,985.30	11.03%	\$233,815.74	\$93,526.30
Harrison	\$180,844.49	\$19,499.03	10.78%	\$161,345.46	\$64,538.18
Hendricks	\$590,728.95	\$87,672.54	14.84%	\$503,056.41	\$201,222.56
Howard	\$600,261.57	\$43,918.79	7.32%	\$556,342.78	\$222,537.11
Jackson	\$271,151.21	\$9,746.71	3.59%	\$261,404.50	\$104,561.80
Jasper	\$130,200.89	\$31,461.07	24.16%	\$98,739.82	\$39,495.93
Jay	\$137,345.43	\$18,816.52	13.70%	\$118,528.91	\$47,411.57
Jefferson	\$171,846.25	\$28,712.63	16.71%	\$143,133.62	\$57,253.45
Jennings	\$123,848.92	\$14,668.93	11.84%	\$109,179.99	\$43,672.00
Knox	\$211,415.69	\$39,886.87	18.87%	\$171,528.82	\$68,611.53
Kosciusko	\$373,179.17	\$112,963.21	30.27%	\$260,215.96	\$104,086.38
LaGrange	\$145,476.48	\$47,192.93	32.44%	\$98,283.55	\$39,313.42
Lake	\$1,738,190.31	\$7,994.19	0.46%	\$1,730,196.12	\$692,078.45

LaPorte	\$366,799.01	\$39,383.54	10.74%	\$327,415.47	\$130,966.19
Lawrence	\$335,879.42	\$60,316.81	17.96%	\$275,562.61	\$110,225.04
Madison	\$712,810.03	\$15,525.68	2.18%	\$697,284.35	\$278,913.74
Marion	\$8,043,967.96	\$850,441.02	10.57%	\$7,193,526.94	\$2,877,410.78
Martin	\$66,993.01	\$4,982.49	7.44%	\$62,010.53	\$24,804.21
Miami	\$213,007.45	\$26,922.98	12.64%	\$186,084.47	\$74,433.79
Monroe	\$731,676.70	\$129,073.82	17.64%	\$602,602.88	\$241,041.15
Noble	\$305,600.99	\$57,139.51	18.70%	\$248,461.48	\$99,384.59
Ohio	\$115,629.84	\$15,378.06	13.30%	\$100,251.78	\$40,100.71
Orange	\$93,652.45	\$16,864.78	18.01%	\$76,787.67	\$30,715.07
Owen	\$126,899.62	\$16,065.84	12.66%	\$110,833.78	\$44,333.51
Perry	\$120,463.09	\$9,820.58	8.15%	\$110,642.51	\$44,257.00
Pike	\$78,234.77	\$7,683.88	9.82%	\$70,550.89	\$28,220.36
Pulaski	\$98,030.01	\$30,201.73	30.81%	\$67,828.28	\$27,131.31
Ripley	\$55,268.67	\$8,212.64	14.86%	\$47,056.03	\$18,822.41
Rush	\$147,497.33	\$29,023.31	19.68%	\$118,474.02	\$47,389.61
Scott	\$142,696.15	\$22,160.72	15.53%	\$120,535.43	\$48,214.17
Shelby	\$213,849.31	\$40,253.27	18.82%	\$173,596.04	\$69,438.41
Spencer	\$153,424.17	\$15,159.23	9.88%	\$138,264.94	\$55,305.98
Steuben	\$136,306.70	\$30,545.36	22.41%	\$105,761.34	\$42,304.54
StJoseph	\$926,061.25	\$85,032.81	9.18%	\$841,028.44	\$336,411.38
Sullivan	\$96,840.02	\$15,312.54	15.81%	\$81,527.48	\$32,610.99
Switzerland	\$42,167.74	\$6,947.96	16.48%	\$35,219.78	\$14,087.91
Tippecanoe	\$1,175,808.63	\$195,751.44	16.65%	\$980,057.19	\$392,022.88
Union	\$22,806.67	\$3,135.71	13.75%	\$19,670.96	\$7,868.38
Vanderburgh	\$1,139,249.22	\$60,364.49	5.30%	\$1,078,884.73	\$431,553.89
Vigo	\$1,063,042.96	\$157,311.67	14.80%	\$905,731.29	\$362,292.52
Wabash	\$153,925.93	\$24,157.27	15.69%	\$129,768.66	\$51,907.46
Warren	\$26,612.86	\$6,592.71	24.77%	\$20,020.15	\$8,008.06
Warrick	\$178,269.55	\$18,966.01	10.64%	\$159,303.54	\$63,721.42
Washington	\$198,215.71	\$19,683.72	9.93%	\$178,531.99	\$71,412.79
WCIPDO	\$210,479.18	\$44,950.14	21.36%	\$165,529.04	\$66,211.62
White	\$113,086.69	\$34,118.24	30.17%	\$78,968.45	\$31,587.38
TOTAL	\$28,303,636.74	\$3,215,218.76		\$25,088,417.99	\$10,035,367.19

Appendix 2

RULE 6.1 FINAL PROPOSED DRAFT & LWOP SUBMISSION

Rule 6.1 Final Proposed Draft

The Commission and the PD Council's Working Group has completed its work in evaluating the public comments provided at the last meeting (and attached in Agenda Item #8B). In Agenda Item #8A, you will find the final proposed rule with edits noted by color. The edits in red and orange are the result of public comments and further discussion of the working group while the edits in blue are the original proposed changes and edits in purple are also new changes but done as part of a clean-up project and generally non-controversial.

The primary point of contention will remain the alternative language proposals regarding what entity has the authority to appoint counsel in cases where the death penalty is sought.

LWOP SUBMISSION

At the June meeting, the Commission voted to request that the Supreme Court adopt standards for appointments in cases where Life Without Parole is sought. Staff offered to develop over a general proposal with the proposed changes to Rule 6.1. The PD Council has previously endorsed the appointment of two attorneys, that lead counsel have prior experience in an LWOP or death penalty case, that both counsel meet the Commission's murder qualifications and that have six hours of training every two years in death penalty or LWOP cases.

Staff requests to submit the following for consideration to the Supreme Court:

- 1) The appointment of no fewer than two qualified attorneys;
- 2) That lead counsel have prior experience in either a death penalty or life without parole case;
- 3) That both attorneys meet the minimum of the Commission's standards to be qualified to handle murder cases (3 years and 3 major felony trials)
- 4) A training component focusing on either LWOP or death penalty cases and perhaps in an amount lesser than required by Rule 6.1;
- 5) Whether counsel should either be salaried in a county with a comprehensive plan approved by the Commission or otherwise paid no less than the Commission's then-current non-capital hourly rate.

COLOR CODE:

Blue is for original changes submitted by the Commission for public comment

Purple is for recent cleanup changes made by the working group, not pursuant to comments

Red is for changes made by the working group at the suggestion of the PD Council or due to public comment

Orange is for changes discussed by the group, but final wording left to Commission staff

Rule 6.1. Capital Cases – Proposed revisions

(A) Supreme Court Case Number.

Whenever a prosecuting attorney seeks the death sentence by filing a request pursuant to ~~IC Indiana Code §~~ 35-50-2-9, the prosecuting attorney must file that request with the trial court and with ~~the Indiana Office of Court Services (IOCS)~~ ~~Supreme Court Services~~. ~~Indiana Supreme Court, 315 State House, Indianapolis, Indiana 46204.~~ Upon receipt of same, ~~Supreme Court Services~~ ~~IOCS~~ must open a case number in the Supreme Court and notify counsel, ~~the Indiana Prosecuting Attorneys Council (IPAC), the Indiana Public Defender Council (IPDC), and the Commission on Court Appointed Attorneys (CCAA).~~

(B) Appointment of Qualified Trial Counsel.

TWO VERSIONS FOR CONSIDERATION:

Upon a finding of indigency ~~and request for appointed counsel~~, it is the duty of ~~the judge either the chief public defender, or in a county with no chief public defender, the Indiana Public Defender Council, to name no fewer~~ than two qualified attorneys to represent an individual in a trial proceeding where a death sentence is sought. ~~The judge presiding in a capital case shall enter a written order appointing the attorneys selected by either the chief public defender, or in a county with no chief public defender, the Executive Director of the Indiana Public Defender Council, specifically named. The appointment of qualified counsel must be made within three business days of the filing of the request for a death sentence.~~ The provisions for the appointment of counsel set forth in this section do not apply in cases wherein counsel is employed at the expense of the defendant ~~or represents the defendant pro bono.~~

OR KEEP THE APPOINTING AUTHORITY THE SAME

Upon a finding of indigency ~~and request for appointed counsel~~, it is the duty of the presiding judge in a capital case to enter an order specifically naming ~~no fewer than two~~ qualified attorneys to represent an individual in a trial proceeding where a death sentence is sought. ~~The county chief public defender, if there is one, will provide the judge with the names of the~~

qualified attorneys, otherwise the presiding judge will select and appoint the qualified attorneys. The assignment or appointment of qualified counsel must be made within three business days of the filing of the request for a death sentence. The provisions for the appointment of counsel set forth in this section do not apply in cases wherein counsel is privately retained employed at the expense of the defendant or represents the defendant pro bono.

(1) Qualifications of Counsel, Generally.

Attorneys-Counsel assigned or appointed to a capital case ~~or accepting appointments pursuant to~~ under this rule must provide each client with quality representation in accordance with constitutional and professional standards. Counsel must be familiar with, and guided by, the performance standards found within the most recent American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases ~~as well as~~ and the most recent Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.

(2) Lead Counsel; Qualifications.

One of the attorneys ~~appointed by the court~~ must be designated as lead counsel. To be eligible to serve as lead counsel, an attorney must:

- (a) be an active, experienced ~~and active~~ trial practitioner with at least five years of criminal litigation experience;
- (b) have prior experience either:
 - (i) as lead counsel in no fewer than two cases where the death penalty was sought; or
 - (ii) lead or co-counsel in no fewer than five felony jury trials:
 - (1) where the highest charge ~~was~~ is a Level 5 felony or higher~~greater~~;
 - (2) at least one of which ~~was~~ is a serious violent felony (as defined by IC 35-47-4-5);
 - (3) which were tried to completion within ten years of the appointment; and
 - (4) have prior experience as lead or co-counsel in at least one case in which the death penalty was sought;

"Prior experience" is defined as continued representation from appointment through conclusion of the case; or substantial participation in ~~preparing the preparation of~~ the case for trial and sentencing, including performance of a fact and mitigation investigation;

- (d) have completed within two years prior to appointment at least ~~eighteen~~ twelve-hours of training in the defense of capital cases in at least one course approved by the CCAA ~~Commission on Court Appointed Attorneys of which at least twelve hours must be subject-matter training and six hours must be skills-based training.~~ CounselThe attorney must also complete the above-referenced hours at least every two years during the pendency of the case in the trial court. CounselThe attorney not meeting the training requirements at the time of appointment may petition the Supreme Court for temporary waiver of the training

requirements. The petition must contain the name, location, and date of the training that counsel~~The attorney~~ will complete and must certify to the Supreme Court that the education was completed.

(3) Co-Counsel, Qualifications.

The remaining attorney(s) must be designated as co-counsel. To be eligible to serve as co-counsel, an attorney must:

(a) be an ~~active~~, experienced ~~and active~~ trial practitioner with at least three years of criminal litigation experience;

(b) have prior experience ~~either: as lead or co-counsel in no fewer than three felony jury trials:~~

(i) as lead or co-counsel in at least one case where the death penalty was sought; or

(ii) in no fewer than three felony jury trials:

1. where the highest charge ~~was~~ a Level 5 felony or ~~higher~~greater;

2. in at least one of which, counsel served as lead counsel; and

3. which were tried to completion within ~~ten~~ years of the appointment;

(c) have completed within two years prior to appointment at least ~~eighteen~~ twelve hours of training in the defense of capital cases in ~~at least one~~ course approved by the ~~Commission on Court Appointed Attorneys~~CCAA of which at least twelve hours must be subject-matter training and six hours must be skills-based training. If co-counsel meets the qualifications to be lead counsel as specified above, the six hours skills-based training is not required. ~~An attorney~~Counsel must also complete the above-referenced hours at least every two years during the pendency of the case in the trial court. ~~An attorney~~Counsel not meeting the training requirements at the time of appointment may petition the Supreme Court for temporary waiver of the training requirements. The petition must contain the name, location, and date of the training that ~~the attorney~~counsel will complete and must certify to the Supreme Court that the education was completed.

(4) Defense Team

As soon as possible after counsel has been assigned to a capital case, counsel shall assemble a defense team with non-attorney team members ~~such that the team~~ includes:

(a) At least one member qualified to be a fact investigator;

(b) At least one member qualified to be a mitigation specialist;

(c) At least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments; and

(d) Any other members needed to provide ~~zealous and effective~~ high quality representation.

(5) Workload of ~~Appointed~~ Counsel.

~~In the appointment of~~ In appointing or assigning counsel, the nature and volume of ~~the workload of appointed~~ counsel's workload must be considered to assure that counsel can direct sufficient attention to ~~defending the defense of~~ a capital case.

(a) ~~Appointed~~-~~c~~Counsel must not accept workloads which, by reason of their excessive size, interfere ~~providing with the rendering of~~ quality representation or lead to the breach of professional obligations.

(b) ~~An~~ Appointment or assignment of counsel in a capital case must include an assessment of the impact of the appointment on the ~~entirety of the~~ attorney's ~~public and private~~ workload, including the administrative duties of a chief or managing public defender.

(c) Attorneys who take hourly public defense appointments or are salaried or contractual public defenders in any county may be appointed as trial counsel in a capital case, if:

(i) they are not counsel on more than one other capital case pending in a trial court;

(ii) if the appointment or assignment would be ~~counsel's-the attorney's~~ second capital case pending in a trial court, ~~counsel-the attorney~~ will not have any other open felony public defense cases while the capital cases are pending in the trial court; if the assignment or appointment would be the attorney's only pending capital case ~~pending in a trial court~~, ~~counsel's-the attorney's~~ public defense caseload, ~~across all counties~~, will not exceed twenty open felony cases while the capital case is pending in the trial court;

(iii) ~~Counsel-the attorney~~ will receive no new public defense appointments within thirty days of a trial setting in the capital case;

(iv) none of the ~~counsel's-the attorney's~~ public or private cases, ~~public or private~~, will be set for trial within ~~fifteen~~ ~~thirty~~ days of the trial setting in the capital case; and

(v) compensation is provided as specified in paragraph (C).

~~(d) The workload of full-time salaried capital public defenders will be limited consistent with subsection (B)(3)(a). The head of the local public defender agency or office, or in the event there is no agency or office, the trial judge, must not make an appointment of a full-time capital public defender in a capital case without assessing the impact of the appointment on the attorney's workload, including the administrative duties of a chief or managing public defender. In assessing an attorney's workload, the head of the local public defender agency or office, or in the event there is no agency or office, the trial judge must be guided by Standard J of the Standards for Indigent Defense Services in Non-Capital cases as adopted by the Indiana Public Defender Commission, effective January 1, 1995, and must treat each capital case as the equivalent of forty felonies under the Commission's "all felonies" category. Appointment of counsel is also subject to subsections (B)(3)(c)(ii), (iii) and (iv).~~

(C) Compensation of Appointed Trial Counsel.

All hourly rate trial defense counsel appointed in a capital case must be compensated under subsection (1) of this provision. ~~upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought.~~ Hourly rate counsel must submit periodic **ex parte** billings, not less than once every thirty days, after the date of appointment, **detailing the date, activity, and time duration for which compensation is sought.** ~~by the trial court.~~ All salaried capital public defenders compensated under subsection (4) of this provision must present a monthly report detailing the date, activity, and time duration of services rendered after the date of appointment. Periodic payment during the course of counsel's representation must be made.

(1) Hours and Hourly Rate.

~~Defense~~ Counsel appointed at an hourly rate in capital cases must be compensated ~~only~~ for the time and services **performed that are reasonable and necessary.** **The trial judge must review and approve counsel's billing within thirty days after submission of billings by counsel.**

Attorneys appointed at an hourly rate shall be compensated for services performed at the hourly rate set forth by the Chief Administrative Officer (CAO) of the Indiana Office of Judicial Administration (IOJA). Beginning July 1, 2026, and July 1st of each even year thereafter, the CAO will announce the hourly **rate for defense services performed on or after January 1, of the years following the announcement. The hourly **rate of one hundred fifty-one (\$151) dollars** an hour will be increased using the Gross Domestic Product Implicit Price Deflator, as announced by the United States Department of Commerce, for the last two years ending December 31st preceding the announcement. The increase ~~by the CAO~~ must be rounded to the next closest whole dollar.**

~~In the event the~~ **If the** trial judge determines that the rate of compensation is **below that which** is representative of practice in the community, the **trial** ~~appointing~~ judge may request the CAO of the IOJA to authorize payment of an **increased** hourly rate of compensation in a specific case.

(2) Support Services and Incidental Expenses.

Counsel appointed at an hourly rate in a capital case must be provided, upon an ex parte showing to the trial court of reasonableness and necessity, with adequate funds for ~~investigative, expert, and other services~~ **the purpose of securing investigative services, mitigation specialists and services related to mitigation efforts, Defense-Initiated Victim Outreach (DIVO) services, expert witnesses, and any other service** deemed necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase. In addition to the hourly rate provided in this rule, all counsel must be reimbursed for reasonable and necessary incidental expenses approved by the trial judge. Counsel may seek advance authorization from the trial judge, ex parte, for specific incidental expenses. Full-time salaried public defenders must be provided with adequate funds for ~~investigative, expert, and other services~~ **the purpose of**

securing investigative services, mitigation specialists and services related to mitigative efforts, Defense-Initiated Victim Outreach (DIVO) services, expert witnesses, and any other service deemed necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase, as determined by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge as set forth above.

(3) Contract Public Defenders.

If counsel is appointed to a capital case in the county where counsel is also generally contracted to perform other defense services, the county entity that is charged with issuing counsel's contract, may adjust counsel's rate of compensation for those other defense services, during the pendency of the capital case, to account for counsel's case assignment limitations established by this rule.

(4) Salaried Public Defenders.

In those counties having adopted a Comprehensive Plan as set forth in Ind. Code § 33-9-15 et. Seq., which has been approved by the CCAA, and who are in compliance with Commission standards authorized by Ind. Code § 33-9-13-3(2), a full-time 1.0 FTE, salaried capital public defender meeting the requirements of this rule may be assigned in a capital case by the chief public defender, or in the event there is no chief public defender, by [insert according to what is adopted above – aka trial judge/PD Council/etc.]. Salaried capital public defenders may be designated as either lead counsel or co-counsel. Salaried capital lead counsel and co-counsel must be paid salary and benefits equivalent to the average of the salary and benefits paid to lead prosecuting attorneys and prosecuting attorneys serving as co-counsel, respectively, assigned to capital cases in the county.

~~Each year, by July 1, Those counties wishing to utilize~~ appointing 1.0 FTE salaried public defenders to for capital cases must submit within forty-five days of appointment to a capital case to the CAO of the IOJA the salary and benefits proposed to be paid to the salaried public defenders for the upcoming year along with the salaries and benefits paid to lead prosecutors and prosecutors serving as co-counsel assigned to the capital cases. ~~in the county in the thirty-six months prior to July 1, or a certification that no such prosecutor assignments were made.~~ Updated salary information must be provided within forty-five days after there is a change in salary of a prosecutor or public defender assigned on the case. The CAO must verify and confirm to the CCAA and the requesting county that the proposed salary and benefits are in compliance with this rule. If ~~in the event~~ a county determines that the rate of compensation set forth herein is not representative of practice in the community, the county may request the CAO to authorize a different salary for a specific and the county would need to renew that request by July 1 each year.

(D) Transcription of Capital Cases.

The trial or post-conviction court in which a capital case is pending must provide for real-time stenographic reporting with computer-aided transcription of all phases of trial and sentencing

and all evidentiary hearings, including both questions and answers, all rulings of the judge in respect to the admission and rejection of evidence and objections thereto and oral argument. If the parties agree, on the record, the court may permit **real-time** electronic recording or stenographic reporting without computer-aided transcription of pre-trial attorney conferences and pre-trial or post-trial non-evidentiary hearings and arguments.

(E – G) – NO CHANGES (Imposition of Sentence, Setting of Initial Execution Date, and Stay of Execution Date)

(H)*¹ – Initiation of Appeal.

When a trial court imposes a death sentence, it must on the same day sentence is imposed order the court reporter and clerk to begin immediate preparation of the record on appeal.

(I) Appointment of Appellate Counsel.

Upon a finding of indigency, the trial court imposing a sentence of death must immediately enter a written order specifically naming ~~counsel~~ **at least two attorneys** under this provision for appeal. If qualified to serve as appellate counsel under this rule, trial counsel ~~must~~ **may only** be appointed as ~~sole or~~ co-counsel for appeal.

(1) Lead Appellate Counsel; Qualifications

An attorney appointed to serve as **lead** appellate counsel for an individual sentenced to die, must:

(a) be an **active**, experienced ~~and active~~ trial or appellate practitioner with at least **five** ~~three~~ years of **criminal litigation** experience ~~in criminal litigation~~;

(b) have prior experience either:

(i) as appellate counsel in no fewer than two appeals where the death penalty **or life without parole was sought**, **regardless of the ultimate resolution of the case**; or

(ii) as appellate counsel in no fewer than **ten (10)** ~~five-felony~~ **appeals convictions** in federal or state court, **including at least one serious violent felony as defined by Ind. Code in IC 35-47-4-5** within the last five years; and

(c) have completed within two years prior to appointment at least twelve hours of training in the defense of capital cases and **have completed within five years prior to appointment at least six hours of training in appellate practice, both in** courses approved by the CCAA.

(2) Co-Counsel Appellate Counsel; Qualifications.

¹ (H) – Post-conviction relief moved to (K)

An attorney appointed to serve as appellate co-counsel for an individual sentenced to die, ~~the attorney must:~~

(a) be an active, experienced ~~and active~~ trial or appellate practitioner with at least two years of criminal litigation experience ~~in criminal litigation~~.

(b) have prior experience within the last three years as appellate counsel in no fewer than three ~~(3)~~ felony convictions in federal or state court; and

(c) ~~have completed~~ within two years ~~prior to before~~ appointment, have completed at least twelve hours of training in the defense of capital cases and ~~have completed~~ within five years ~~prior to before~~ appointment, have completed at least six hours of training in appellate practice, both in courses approved by the ~~Commission on Court Appointed Attorneys~~(CCAA).

(3) Workload of Appointed Appellate Counsel.

In the appointment of appellate counsel, ~~the judge must assess~~ the nature and volume of the public and private workload of appointed appellate counsel ~~must be assessed~~ to assure that counsel can direct sufficient attention to the appeal of the capital case. If ~~in the event the~~ appointed appellate counsel is under a contract to perform other defense or appellate services for the court of appointment, no new cases for appeal ~~may must~~ be assigned to such counsel until the Appellant's Brief in the death penalty case is filed.

(J) Compensation of Appellate Counsel.

All hourly rate appellate defense counsel appointed in a capital case must be compensated under subsection (1) of this provision. ~~upon presentment and approval of a claim for services~~ Hourly rate counsel must submit periodic ~~ex parte~~ billings, not less than once every thirty days, after the date of appointment detailing the date, activity, and time duration for which compensation is sought.

(1) Hours and Hourly rate.

Appellate ~~defense~~ counsel appointed to represent an individual sentenced to die must be compensated ~~under this provision upon presentment and approval of a claim for services for time and services performed at the hourly rate of ninety dollars only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination must be made within thirty days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time.~~ that are reasonable and necessary at the same hourly rate set forth in section (C)(1). The appointing judge must review and approve counsel's billing within thirty days after submission of billings by counsel.

~~The hourly rate set forth above must be subject to review and adjustment as set forth in section (C)(1).~~

~~In the event~~ If the appointing judge determines that the rate of compensation is below that which is not representative of practice in the community, the appointing judge may request the CAO of the IOJA to authorize payment of an increased different hourly rate of compensation in a specific case.

(2) Contract Public Defenders.

~~In the event appointed appellate counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty appeal to reflect the limitations of case assignment established by this rule.~~ If appellate counsel is appointed to a death penalty capital case in the county in which where counsel is also generally contracted to perform other defense services, the county entity that is charged with issuing counsel's contract, may adjust counsel's rate of compensation for those other defense services, during the pendency of the death penalty capital appeal, in order to account for counsel's case assignment limitations established by this rule.

(3) Salaried Capital Public Defenders.

~~In the event appointed appellate counsel is a salaried capital public defender, as described in section (C)(4), the county must comply with, and counsel must be compensated according to, the requirements of section (C)(4).~~

(4) Incidental Expenses.

~~In addition to the hourly rate or salary provided in this rule, appellate counsel must be reimbursed for reasonable incidental expenses as approved by the court of appointment.~~

(K) Post-Conviction Relief

(1) Stay – Duty of Counsel

Within thirty days following completion of rehearing, private counsel retained by the inmate or the State Public Defender (by deputy or by special assistant in the event of a conflict of interest) must enter an appearance in the trial court, advise the trial court of the intent to petition for post-conviction relief, and request the Supreme Court to extend the stay of execution of the death sentence. A copy of said appearance and notice of intent to file a petition for post-conviction relief must be served by counsel on Supreme Court Services IOCS. When the request to extend the stay is received, the Supreme Court will direct the trial court to submit a case management schedule consistent with Ind. Code § 35-50-2-9(i) for approval. On the thirtieth day following completion of any appellate review of the decision in the post-conviction proceeding, the Supreme Court must enter an order setting the execution date. It is the duty of counsel of record to provide notice to Supreme Court Services IOCS of any action filed with or decision rendered by a federal court that relate to defendants sentenced to death by a court in Indiana.

(2) Appointment of Qualified Post-Conviction Counsel

In cases where appellate proceedings have been completed and the death penalty has been imposed, upon a finding of indigency by the State Public Defender, the State Public Defender shall appoint at least two qualified post-conviction attorneys to represent the defendant.

All attorneys appointed must:

- (a) be an experienced and active post-conviction practitioner;
- (b) have trial, appellate, or post-conviction experience in the use of, and challenges to mental health and forensic expert witnesses and the use of mitigating evidence; and
- (c) be familiar with the practice and procedure of the appropriate courts of the jurisdiction; and
- (d) have attended and successfully completed, within two years prior to their appointment, at least twelve hours of training focused on representation in capital cases; and
- (e) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

Appointments for lead and co-counsel assignments may also be distributed to persons with extensive criminal trial, appellate, and/or post-conviction experience if it is clearly demonstrated to the appointing authority that competent representation will be provided to the capitally charged indigent defendant. Attorneys appointed under this paragraph shall meet one or more of the following qualifications:

- (a) Experience in trial, appeal, and/or post-conviction representation in death penalty cases which does not meet the levels detailed above;
- (b) Specialized post-graduate training in the defense of persons accused of capital crimes;
- (c) The availability of ongoing consultation support from experienced post-conviction death penalty counsel.

(3) Lead Counsel, Qualifications.

One of the attorneys appointed must be designated as lead counsel. In addition to the qualifications in subsection (2) of this section, to be eligible to serve as lead counsel, an attorney must:

- (a) have prior experience as lead counsel in no fewer than three post-conviction evidentiary hearings or appeals of serious and complex cases in state or federal court.
- (b) have experience in at least two post-conviction cases in which the charge was murder;

(4) Workload of Appointed Post-Conviction Counsel.

~~In the appointment~~ appointing of post-conviction counsel, the nature and volume of the workload of appointed counsel must be assessed to assure that counsel can direct sufficient attention to the post-conviction action of the capital case. Attorneys may be appointed in no more than two pending capital post-conviction cases at any given time.