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# Public Defender Commission



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## Indirect Cost Calculations Prohibited

The Commission encourages counties to fully account for all public defense expenses in order to receive the maximum allowable amount of reimbursement. At least one consulting firm has reached out to counties offering indirect rate calculations to submit for reimbursement. While indirect costs are allowable under many programs, such as Title IV-D and grants offered through various state entities, the statute governing eligible expenditures for reimbursement is limited to public defense services. Indirect costs are costs associated with doing business, but are not directly attributable to a specific project or service. For example, the salary of a public defender is a direct public defense

cost. However, the salary of the county auditor, which is responsible for ensuring all payments including the public defender, is an indirect cost.

The Commission voted to expressly prohibit such indirect cost calculations.

As you look toward completing your requests for reimbursement, please keep in mind the following guidelines – some of which are new clarifications of current practices:

- 1) All expenses must be public defense services or directly support public defense services in your county.
- 2) You may not include fictional expenses such as market value rent in a county-owned

building where no rent would otherwise be due (but other, real expenses associated with that space are still reimbursable).

3) You may not include expenses that would otherwise be required to be spent – i.e., the cost of the county commissioners, county council, auditor, etc. fulfilling their duties or the cost of an interpreter interpreting for the court when one would have been required for the court to conduct its business, whether or not a public defender was appointed.

The Commission will be examining requests for prohibited expenses. If you are unsure of whether a cost is an allowable expense, as always please contact commission staff for guidance prior to including it.

## Additional Caseload Reporting Requirements Delayed

The Public Defender Commission previously created a subcommittee, including Commission members, PD Council board members, Chief PD's, managing PD's, and deputy public defenders, to further explore the concept of pay parity and to ensure that the Commission continues to push for adequate compensation for the talented public defenders that work in the system.

One of the subcommittee discussions was on the issue of full and part-time public defenders that have between 75-100% of a full-time public defender caseload. The Sixth Amendment Center and the Task Force report has been critical of the Commission's lack of monitoring of unlimited private caseloads for public defenders in Indiana. In order to begin assessment of the extent to which this could be a problem in Indiana, Commission staff proposed requiring counties that use public defenders with an allowable caseload between 75-100% FTE, and without a policy in place to limit and monitor private practice, to report their attorney's private and non-Commission public defense cases. This measure was met with approval at the September Commission meeting and discussed at the October annual training with the concept that beginning in 2019, such reports would be required but that there would be no penalty for the amount of private and non-commission cases a public defender handles – the goal at the time was to simply gather data. Specifically, the cause

numbers of the private and non-commission cases in which these attorneys filed an appearance would have been submitted quarterly to their county. This was also designed to assist the Chiefs and Public Defender Boards that have asked the Commission how to monitor their attorneys' work in other counties.

Following the October training, the Commission was asked by the PD Council to delay implementation of this reporting requirement. At the December meeting, Chief PD Gretchen Etling relayed a request from the Chief's to further delay implementation and also asked the Commission to possibly not collect such data. The Commission reiterated its obligation to gather such information and that it had not yet considered any possible actions to take in the future based upon the receipt of the private caseload information. The Commission agreed to delay the reporting requirement further and instructed Commission staff to work with the Chief PD's between the December and March meetings to see if a solution for manageable reporting requirements, while still gathering this important information, can be created.

The purpose of this reporting requirement is informational as the Commission considers its compensation standards and guidelines. At this time, there is no sanction contemplated for accurate reporting, regardless of the amount of private and non-Commission caseloads reported. The staff encourage all interested parties to contact Derrick Mason to discuss this further and work toward a solution.

For questions about caseload reporting and to provide input, please contact Derrick Mason at [derick.mason@pdcom.in.gov](mailto:derick.mason@pdcom.in.gov).

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## Reimbursement Request Training Held in October

The Public Defender Commission works to make the reimbursement process as painless as possible. Even so, the staff understand that the process is not easy! At this year's training, the staff reviewed changes to the forms as well as a major change in how counties should submit the forms.

Changes to Form I – Make sure to use the updated form!

This form is usually the starting point for the process of filling out the request for reimbursement. The Commission has updated Sections A and C on the second page of the form to provide more clarification. The specific changes are as follows:

### Section A “Personal Services”

- Added additional instruction for self-insurance
- Added a line for social worker costs
- Section A(5) changed to “Employee salaries”

### Section C “Other Services and Charges”

- Changed C(1)(b) from “appointed” to “hourly”
- Updated C(1)(d) – anyone hired on contract (like investigator)
- Removed Insurance (formerly C(6))
- C(10) – Building Related Expense Proration (see instructions)

Reminder: Watch your non-reimbursable case types!

Staff reviewed the rules for non-reimbursable case types, which can often be confusing. Remember, there are two case types that are ALWAYS non-reimbursable:

- Misdemeanors
- Non-Reimbursable other

However, other case types are SOMETIMES non-reimbursable:

- Cases assigned to attorneys who are not qualified to handle that case type, i.e. a Murder case assigned to an attorney who is only Level 6 qualified.

Make sure to keep a copy of all Standard E and F forms to ensure you know which case types your attorneys are qualified to handle! If you would like a report of the attorneys and their qualifications for your county, please send a request to [information@pdcom.in.gov](mailto:information@pdcom.in.gov).

New Requirement: E-mail Forms I-IV, only one form needs mailed!

Previously, the Commission required you to mail a printed copy of all the forms. Staff recognized that this is actually an inefficient process and often led to delays in fixing forms. Therefore, there is a new requirement to e-mail Forms I-IV (in Excel format) to [information@pdcom.in.gov](mailto:information@pdcom.in.gov), and to mail only Form V, which is the signed verification page.

New forms in beta testing!

Do you always have the newest iPhone? Are you looking for an even easier way to submit the reimbursement request each quarter? Fiscal Analyst Jennifer Pinkston has developed a new form that certain counties are in the process of beta testing. If you would like to be part of that testing group, contact Jennifer Pinkston at [Jennifer.pinkston@pdcom.in.gov](mailto:Jennifer.pinkston@pdcom.in.gov).

Standard E and F Form updated – time to switch to the new form!

Staff has updated the Standard E and F form



*Noble County Chief Public Defender Jim Abbs speaks to attendees about working with local officials to increase public defense funding at the county level.*

to create a more usable format that can now be filled out electronically! While there were no substantive changes, this version of the form makes it easier to know what training and experience qualifies your attorney for reimbursement. Please make sure to use this new form as your attorneys earn more experience and as you add new attorneys to your system. Attorneys should submit the forms to each county they anticipate working in, and the county should email a copy to us at [information@pdcom.in.gov](mailto:information@pdcom.in.gov)!

## December Commission Meeting Update

### Legislative Discussion

The Public Defender Commission in its previous meeting approved an extensive legislative reform package in response to the report from the Indiana Task Force on Public Defense, which found significant systemic issues in the administration of public defense in Indiana. The legislative reform package includes the following priorities:

- Securing of the Public Defender Commission base budget
- Changing the Public

### Defender Commission

statute to allow for reimbursement of misdemeanors

- Creation of state-level support for appeals
- Changes to Public Defender Board composition
- Statutory change to allow for optional regionalization of public defense services

The Public Defender Commission discussed and approved specific legislation to pursue this legislative session related to the goals listed above. Additional legislation, including

approval of new members to the Public Defender Commission, was moved to the March meeting. The Commission needs your support in achieving these important goals! For more information on this legislation, contact Derrick Mason at [derrick.mason@pdcom.in.gov](mailto:derrick.mason@pdcom.in.gov).

Indirect Expenses While the legislative discussion comprised the majority of the Commission meeting, there was also a significant discussion about whether indirect expenses would be allowed to be billed to the Commission. For a more

detailed discussion of this topic, please see article on the front page.

### Reporting of Private Caseloads

The Commission and several Chief Public Defenders had an extensive discussion regarding the Commission's proposed request to report private caseloads for attorneys who carry a caseload of over .75 of an FTE. For a more detailed discussion of this topic, please see article on the front page.

## Appellate Workgroup Brings Public Defenders Into Decisionmaking Process

At the request of the Public Defender Commission, staff convened working groups on two important topics: regionalization and the creation of a State Appellate Office. This article will explain in detail the workgroup process that led to the creation of legislation that would create a State Appellate Defender and provide increased state support for appeals throughout a great deal of the state.

In between the September and December meetings of the Commission, the appellate working group met for two, two-hour meetings for a total of four hours of discussion. The first meeting was on October 25, 2018 from 11:00 a.m. – 1:00 p.m., and the second on November 19, 2018 from 1:00 p.m. – 3:00 p.m. A robust e-mail discussion which included approximately fifty e-mails occurred in-between and after the meetings.

In order to obtain a diverse number of perspectives and to include practitioner input, invitations were sent to the Public Defender Council and to any interested parties that contacted me during the process. The attendees represented a variety of geographic regions, as well as a variety of public defender systems and population sizes. Professor Joel Schumm, who was also the chair of the appellate subcommittee of the Task Force on public defense, agreed to help moderate the meetings.

The initial meeting began with a review of the materials gathered by the Indiana Task Force on Public Defense, including the Appellate Subcommittee report, as well as a map of appeals published in 2017 by the Court of Appeals. The second meeting consisted of a review of proposed statutory language that was built out of the discussion out of the first meeting.

Ultimately, the state appellate office working group was unable to create a consensus draft or agree on proposed statutory language. Therefore, staff decided to create a set of options that reflected the diverse perspectives of the working group, from which the Commission could choose the way forward. Despite the areas where reasonable minds disagreed, there was consensus on several principles which the group identified as important for public defense reform:

- Appellate is a specialization – it requires a separate set of skills

- There is space for the State to engage in appellate work with the counties

- Trial and appellate counsel need to work together – there needs to be some collaboration between the trial counsel and appellate
- More resources are needed for both trial and appellate work
- Any proposed office should not handle post-conviction work
- More time/effort is needed to truly flesh out the details of the State Appellate Office

- More data is needed to identify the areas of concern. Merely having a low appeal rate cannot be conflated with a lack of quality, as other forces may give rise to the low appeal rate

The workgroup ultimately rejected a centralized appellate practice similar to the Indiana Attorney General. This reflects the comments made at the September 19th Commission meeting at which Commission member Larry Landis indicated that the efforts to improve quality defense should not disturb the quality work that is ongoing in the state.

At the Commission meeting on December 12, the Commission considered all of the options presented by the workgroup and concluded that statutory language should include the following principles:

- There should be an appellate defender to oversee operations of the appellate division of the Commission, hired by the Commission upon recommendation of a committee that includes various stakeholders, including public defenders

- That Marion and Lake counties would be statutorily exempted and not included in the state appellate office program

- That the state appellate defender would have the ability to contract with local offices to pay for in-house counsel for offices

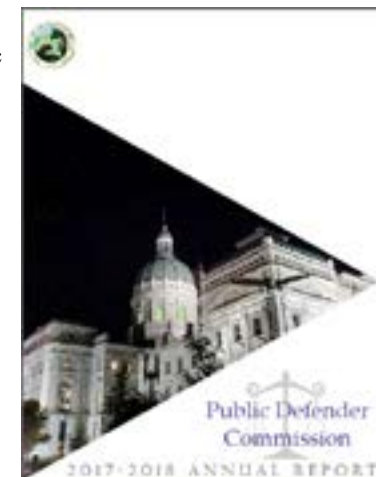
- That the office would be scalable, to start small if a smaller budget was appropriated, and to gather more information and data in the process of development

The staff of the Commission welcome your input and support for this initiative. Contact Kathleen Casey at [Kathleen.casey@pdcom.in.gov](mailto:Kathleen.casey@pdcom.in.gov) if you would like to learn more!

## Reports Now Available for Download



The final report from the Indiana Task Force on Public Defense is available for download. The full report and the executive summary can be found at <https://www.in.gov/publicdefender/2333.htm>.



The Commission is required to submit an annual report to the Indiana General Assembly. The annual report highlights statutory obligations and the fiscal outlays. This year's report includes a time line overview of the Commission's history and a complete county reimbursement history. The fiscal year 2017-2018 report and accompanying cover letter from Chairman Rutherford is now available on our website at <https://www.in.gov/publicdefender/2335.htm>.

Commission Meeting Dates  
March 20, 2019 at 2:45 pm  
June 12, 2019  
September 25, 2019  
December 18, 2019



All meetings are scheduled to begin at 2 pm, with exception to the March 20 meeting. A brief executive session may precede each meeting. Meetings are generally scheduled to be held at our offices (309 W Washington Street, Suite 501, Indianapolis, IN 46204)  
Updates to meeting dates, times and locations are posted on our website: [www.in.gov/publicdefender](http://www.in.gov/publicdefender)



**Request for Reimbursement Deadlines**

- 4Q2018 due February 14, 2019
- 1Q2019 due May 15, 2019
- 2Q2019 due August 14, 2019
- 3Q2019 due November 14, 2019

All requests are due within 45 days after end of the quarter.

Forms I-IV (Excel documents) should be emailed to: [information@pdcom.in.gov](mailto:information@pdcom.in.gov)

Form V should be mailed to:  
Indiana Public Defender Commission  
309 W Washington Street, Suite 501  
Indianapolis, IN 46204

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**Benefits of Strong Public Defense Services**  
*The Drug Crisis*

Public Defenders are the **first responders** to the drug problem in the courtroom. They conduct an assessment of the client and his/her case to determine the best course of action.

The **attorney-client privilege** creates a level of trust where the attorney can speak openly and frankly with their client and discuss options to mitigate the sentence by seeking treatment.

Public Defenders recognize the difference between **addicts and recreational users**.

Public Defenders can connect their clients with services, such as **Recovery Works**.


**Benefits of Strong Public Defense Services**  
*The Drug Crisis*

Public Defenders can make a determination of whether their client should be sent to drug court. **They make the referral to drug court.**

With Commission reimbursement, counties have **more resources to invest toward criminal justice because they receive money back on what was spent.**

**Benefits of Strong Public Defense Services**  
*Reduced Recidivism*


The Indiana State Constitution makes it clear that "the penal system shall be founded on the principles of reformation, and not vindictive justice."



- Commission counties currently have a 20% lower rate of low-recidivism risk (as measured by IRAS) individuals incarcerated in Department of Correction facilities.
- Also fulfills our constitutional and statutory duty to appoint counsel.

**Benefits of Strong Public Defense Services**  
*Workforce Development*

➤ Court cases that drag on cause people to lose their employment, shifting the burden from self-sufficiency to taxpayers; from an able-bodied member of the workforce to a drain on the state and county safety net.



"We must incarcerate the people we're afraid of, and not those who we are mad at."  
—former State Senator Brent Steele

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