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Commission votes to legislate for 50% reimbursement

The Indiana Public Defender Commission has voted to bring relief to misdemeanor caseloads and to reimburse all cases at the rate of 50% by supporting new legislation that would include these changes.

After the presentation of the Sixth Amendment Center on October 4th, 2016, the Public Defender Commission held a meeting to discuss what actions to take in light of the report.

In the short-term, the Commission voted to accept the report and its findings. They also voted to support legislation that would include misdemeanor cases in reimbursement, and increase funding to allow reimbursement at the rate of 50% overall. The higher rate of



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reimbursement is necessary to support the increased cost to many counties that misdemeanor compliance would bring.

Additionally, the Commission voted to create a task force that would evaluate what long-term, statewide changes are needed. The task force will review what the model for indigent defense should look like in Indiana, whether uniform standards are necessary, and how they should be developed.

Hourly Rate Increase

Starting January 1, 2017, the hourly rate for public defenders will increase from \$70 an hour to \$90 an hour, and the death penalty rate will increase to \$120 an hour. These changes were approved by the Commission at the June 2016 meeting, and the non-capital hourly increase is only the second of its kind in 21 years. Per Criminal Rule 26, the capital rate is reviewed every two years, and this increase reflects the regular review of this pay scale.

Following the vote by the Commission, the Indiana Supreme Court approved a raise for the attorneys working for the State Public Defender, and now those that work at an hourly rate are also paid \$90/hour.

The hourly rate does not apply retroactively, but does apply to all cases, even existing ones, starting on the first of the year. The new capital rate only applies to death penalty cases that are opened after January 1, 2017.

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Submit a Story

Is there something happening in your county you'd like to share? Contact Kathleen Casey at kathleen.casey@pdcom.in.gov to submit a story idea for upcoming issues of the Public Defender Commission newsletter.

Sixth Amendment Center Study Released on Indiana



group had already secured independent funding for the report, and therefore the Commission did not have to spend any money to participate. An advisory committee was formed to shape how the state would be studied, and local stakeholders were able to provide input on what counties and cities should be studied to ensure a fair and balanced report.

The advisory committee picked a cross-section of Indiana's counties that reflect the great diversity of size and geographic diversity within our state. Counties were also selected to provide a cross-section of those that participate in the Commission reimbursement program and those that do not. The non-participating counties studied were: Scott, Montgomery, Warrick, Elkhart, and Lake County's juvenile and county courts. The participating counties studied were Blackford, Lawrence, Lake County's criminal division, and Marion County.

To study the state, Mr. Carroll and his team visited each county, conducted court observations and interviews, and reviewed data requested from the Commission. They spent over a year and a half writing the report, and first presented their findings at the September 2016 meeting of the Commission.

The Sixth Amendment Center summarized their research in seven findings and five recommendations. The overall theme of the findings was to increase uniformity in standards and accountability.

Findings

Finding 1: No misdemeanor oversight by Indiana in any of its courts

Per statute, the Commission cannot reimburse misdemeanor expenses. This was a compromise rule that was put in place by the legislature when the total amount of reimbursement was raised from 25% to 40%. However, this compromise has resulted in a lack of caseload standards for misdemeanor

exclusive attorneys. The report found several instances of attorneys with caseloads with two, three, or even four times the maximum caseload recommended by Commission standards.

Finding 2: No standards or guidelines for non-Commission counties

As part of the Commission, readers are well aware of the need to abide by the standards and guidelines promulgated by the Commission. However, 35 counties do not seek reimbursement or have dropped out of the program. Outside of the Commission, no regulation over indigent defense exists.

Finding 3: No death penalty standards for counties that do not seek funding

Much as with the previous finding, unless a county affirmatively seeks reimbursement for capital cases, there is no oversight or quality assurance of the death penalty attorneys to ensure that attorneys have enough time and experience to adequately represent some accused of a crime where death is the punishment.

Finding 4: Inadequate Staffing at

the Public Defender Commission

The Commission has 57 counties in the program, and each county submits reimbursement requests four times a year. In addition, counties submit their capital case requests for reimbursement. All of these documents require a great deal of care and attention as they are

audited. Staff attorneys also must train new counties, and coordinate other activities such as the upcoming caseload study. The study found that two people were not enough to effectively accomplish this task.

Finding 5: Failure to provide counsel at all critical stages of the proceeding

The Sixth Amendment guarantees that a person accused of a crime has access to counsel at what are called "critical stages" of the proceeding. This includes bail hearings, probation revocations, pre-trial conferences and trial itself.

Many counties, even in the Commission, fail to provide lawyers at these critical junctures.

Finding 6: No consistent training or experience requirements.

Cases with varying levels of complexity require different levels of experience. While the Commission requires that public defenders maintain

What's Next

A Task Force, jointly hosted by the three indigent defense agencies in Indiana, will be created in January to address the long-term changes needed as identified by the report. Additionally, legislature in this session will be proposed that will address immediate changes that can be made to better bring the state in line with the findings of the report.

different levels of qualification, in non-Commission counties no such requirement exists.

Finding 7: Undue Judicial Influence

Under the American Bar Association's 10 Principles for Indigent Defense, independence from the judiciary is critical to ensure that public defenders feel free to represent their client in the best way possible without fear of retribution from the judge—who may also be his or her employer! The report recommends the end of the practice of judges hiring attorneys directly.

Recommendations

Recommendation 1: Require uniform standards state-wide

The report disagreed with the piecemeal approach it believed that the state takes to standards and called for standard applicable at trial and direct appeal. Those standards must also cover juvenile and adult cases, and should not depend on whether the county is seeking reimbursement. The standards should cover not only appointment of counsel, but attorney performance, training, and workload, among other factors.

Recommendation 2: Comprehensive, mandatory training and supervision

This recommendation builds on the previous recommendation requiring effective standards, and calls for a mechanism to ensure that the standards are enforced and that the standards apply to all counties equally.

Recommendation 3: Create an independent system to evaluate compliance to standards

This recommendation asks that a system be created that is able to evaluate compliance on the new standards that the Center believes are important to monitor in an indigent defense system.

Recommendation 4: The State of Indiana must prohibit contracts that create financial disincentives for attorneys to provide effective representation

The Center takes time in the report to cover the issue of flat-fee contracts, which create a disincentive for attorneys to work on their public defense cases. If they are paid a flat amount whether the case pleads or goes to trial, attorneys are more likely to resolve cases with less effort—even if more is required. The Center called for all such contracts to be banned.

Recommendation 5: The State of Indiana should create a statewide appellate defender office as a check against inadequate trial-level representation

Unlike the Attorney General, which handles all appeals for the prosecutors, public defenders must write and argue their own appeals. This is an entirely different skill set than trial level work, and the Center believes that a new division should be created to match the skill and resources of the Attorney General.

Over a year after first appearing before the Commission and stating its intention to study Indiana's public defenders, David Carroll and the Sixth Amendment Center have released their final report on Indiana in October. The report found troubling failures in Indiana's system.

The Sixth Amendment Center was established in 2013 and is a non-profit group dedicated to reforming indigent defense throughout the country. The Center is non-partisan and is governed by a board that has members from both political parties, law enforcement and the defense community. Before studying Indiana, the Sixth Amendment Center published reports on Utah, Wisconsin, Mississippi, Delaware, and Nevada.

The overall theme of the findings was to increase uniformity in standards and accountability.

Reports published in those states have often sparked calls for reform. In addition to state-specific reports,

the Center also researches and publishes reports on specific issues such as the right to counsel generally and misdemeanor representation.

Mr. Carroll first approached the Commission in 2015 and asked for the cooperation of the Commission in conducting this study. He and his

The full report can be found on our new website:
<http://www.in.gov/publicdefender/2397.htm>

Public Defender Commission Office has Moved

After becoming statutorily independent, the Public Defender Commission vacated their offices at 30 South Meridian and have taken up new residence in the Old Trails Building across from the Statehouse and the Indiana Government Center.

This change is a significant improvement for the team at the Commission, though we are certainly still unpacking and filing away over twenty-five years of Commission data! You may find an e-mail from Kathleen or Jennifer asking for an extra copy of a comprehensive plan or Standard E and F form. We are going through and ensuring that not one piece of data was lost in the transition and that if it was, to replace it immediately. Thank you in advance for your help!

Our new location gives us a great ability to liason with the Indiana Public Defender Council, and to share resources on public defense improvement where appropriate.

While renovations are still underway in our new office, in the future Commission meetings will be held at this location. In the interim, the meetings are being held at the Indiana Government Center, directly across the street.

Starting now, however, please address all correspondence that you have to our new address, 309 West Washington Street, Suite 501, Indianapolis, IN 46204.



The Public Defender Commission office is now located in the Old Trails Building at 309 West Washington Street, Suite 501, Indianapolis IN 46204.

Public Defender Council Hires Training Director



Diane Black is the new Training Director for the Indiana Public Defender Council. She graduated from Indiana University School of Law-Indianapolis in 1995. Throughout most of her career she was a trial lawyer with the Marion County Public Defender Agency, trying cases in all divisions. In July 2010 she was promoted to Chief Trial Deputy, responsible for training approximately

150 full-time lawyers and litigating high-profile cases. She brings both her litigation and training experiences to the Council. She is available to provide trainings to all attorneys who are members of the Public Defender Council, which includes all attorneys who are appointed as public defenders. She can be reached at dblack@pdc.in.gov and 317-232-3344. Diane is available to travel

to your county to provide trainings to attorneys on any area that is needed, from TPR/CHINS to evidence and trial practice. Additionally, she can connect your attorneys with other attorneys around the state for second-chair jury trial experience so that they can become qualified to handle higher-level cases. For more information on her upcoming trainings, please e-mail or call her.

Public Defender Commission Hires Fiscal Analyst

The Indiana Public Defender Commission has hired a fiscal analyst, Jennifer Pinkston. Jennifer brings over twelve years of experience in state government to this position and greatly expands the capability of the Commission to respond to questions and ensure compliance with standards. While working in her previous positions in state government, Jennifer developed a deep expertise in budgets, financial analysis, grants management and county

operations. In her most recent position as a Financial Analyst for the Indiana Supreme Court - Division of State Court Administration, she developed budget and tracking tools to assist divisions meet their budget requirements and provide detailed expenditure forecasts. The Commission is excited to have her as a new member of the team! Should you have questions, her contact information is: Jennifer.pinkston@pdcom.in.gov and 317-671-3064.



New Commission Staff member Jennifer Pinkston. Jennifer can be reached at jennifer.pinkston@pdcom.in.gov

American Bar Association: Ten Principles of A Public Defense Delivery System

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.

6. Defense counsel's ability, training, and experience match the complexity of the case.

2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.



7. The same attorney continuously represents the client until completion of the case.

3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

9. Defense counsel is provided with and required to attend continuing legal education.

5. Defense counsel's workload is controlled to permit the rendering of quality representation.

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Important Dates

Request for Reimbursement Deadlines for 2017

- 4th Quarter 2016 due February 14, 2017
- 1st Quarter 2017 due May 15, 2017
- 2nd Quarter 2017 due August 14, 2017
- 3rd Quarter 2017 due November 14, 2017

All requests for reimbursement must be postmarked by the above date. Please feel free to send in your submission early!

As always, our staff are happy to assist with any questions you have in completing the report.



Join us for the 2017 Commission Meetings

The Commission will meet on the following dates in 2017:

March 22, 2017
June 14, 2017
September 20, 2017
December 13, 2017

The March 22, 2017 meeting is tentatively scheduled to be held at the Indiana Government Center South (IGCS), Conference Room A. IGCS is located at 302 W Washington Street. The public entrance is located on the Senate Avenue end of the building. During the legislative session, parking

at the government center is limited to employees only. Parking information can be found here: http://www.in.gov/idoa/files/parking_in_the_vicinity_of_IGC.pdf.

Inaugural Annual Training to be Held in May 2017

After listening to requests from member counties, the team at the Commission

is pleased to host the First Annual Training Conference on May 2, 2017.

This one-day training will feature workshops and hands-on training sessions on how to fill out the reimbursement request with as little stress as possible.

We will go

into detail on each part of the request, and take time to ensure that you will understand the purpose behind the forms--not just how to fill them out.

This is the first time that the Commission has held such an event, and we hope that the training session will be an opportunity for members to share best practices and network to help build a strong support system across the state. With 57 counties in

the program and many more hoping to join, the Annual Training will provide a great kickoff to a new era in the Commission history.

Light breakfast will be provided, and a fajita lunch will also be included. Please save the date, and registration details will be sent in the New Year. If there is a particular topic or training that you would like to see as a part of the event, please contact Kathleen Casey.



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