

INDIANA PUBLIC DEFENDER COMMISSION

March 19, 2021

2:00 PM

309 W. Washington, 5th Floor, Commission Conference Room
Indianapolis, Indiana 46204

Members in attendance:

Mr. Mark Rutherford, Chair (in person)
Mr. Richard Bray (in person)
Ms. Bernice Corley (remote)
Hon. Mary Ellen Diekhoff (remote)
Hon. Kelsey Hanlon (remote)
Mr. David J. Hensel (remote)
Rep. Ryan Lauer (remote)

Audience members (all remote):

Bruce Andis, Lawrence County
Chief Public Defender
Ray Cassanova, Marion County
Public Defender Agency
Jim Abbs, Noble County
Chief Public Defender and President
of Indiana Chief Public Defender
Association
Mark Clark, Washington County
Chief Public Defender
Gretchen Etling, Vigo County
Chief Public Defender
Lisa Moody, Gibson County Chief
Public Defender
Greg Bowes, Public Defender

Staff in attendance:

Derrick Mason (in person)
Andrew Cullen (in person)
Paula Diaz (in person)
Andrew Falk (remote)
Torrin Liddell (remote)
Jennifer Pinkston (remote)
Jennifer Shircliff (remote)

Members absent:

Hon. Steven P. Meyer
Sen. Gregory G. Taylor
Sen. Eric Koch
Rep. Ryan Dvorak

At two o'clock, Chair Mark Rutherford called the meeting to order. Senior Staff Attorney Derrick Mason called roll for the Commission members and staff. Mr. Mason also announced each of the audience members present and they specified their affiliation.

Chair Mark Rutherford recognized the meeting was just at a quorum and asked if there were any objections to the Public Meeting Agenda. There were no objections. Because the meeting could lose the quorum necessary for approving disbursements, Mr. Mason asked to begin with status of county compliance, which became the first item of business with no objection.

1. Status of County Compliance (Agenda Item #6)

A. Follow-Up: Lawrence County (90-Day) & Brown County

Lawrence County: Mr. Mason provided the following background: The Commission sent Lawrence County a 90-day letter six months prior to this meeting. At the December 16, 2020 meeting, the Commission approved an additional 90 days for Lawrence County to reach a plan for compliance as directed by the 90-day letter. The plan was to be reviewed at this meeting.

Mr. Mason read an excerpt from the Lawrence County Council meeting Minutes held on March 9, 2021. Pursuant to the Minutes, the Council approved a motion to increase salaries for deputy public defender attorneys, a \$5,000 stipend for the chief public defender, and to hire both an investigator and a social worker. The plan would increase the Lawrence County Public Defender Agency's budget by \$103,869. Mr. Mason pointed out that the salary increases and additional staff hires should bring Lawrence County into compliance. Mr. Mason pointed out that Lawrence County is in caseload compliance this quarter and recommended full reimbursement. The 90-day letter is resolved.

Brown County: Mr. Mason explained he spoke with Brown County's Public Defender Board Chair, Ruth Johnson, regarding local law enforcement's investigation into a particular Brown County public defender's billing practices. The special prosecutor has declined to file charges. Mr. Mason maintains contact with Ms. Johnson for information regarding additional activity concerning this issue. Mr. Mason and Ms. Johnson discussed the Commission sending a letter asking the county to develop a plan that would familiarize the public defender board, county council, county auditor, and county commissioners with public defender billing practices and address how to handle issues relating to such billing practices in the future. Mr. Mason further explained this letter would not serve as a 90-day letter but would instruct the Commission on the county's plans to handle those issues in the future. Mr. Mason believes Ms. Johnson is on board with the letter and he will remain in contact with her to maintain the status of the attorney investigation.

B. Non-Capital Caseloads

Mr. Mason reports there are some multi-county attorneys out of compliance, but most of the affected counties have a plan to come into compliance that will start at the beginning of next year. Mr. Mason is optimistic that most of these issues will be resolved during the first couple of quarters in 2021. Regarding counties that are out of compliance, Mr. Mason reports that Elkhart County's reimbursement is being reduced until July 1, 2021

for the chief’s salary and benefits because they are out of compliance with our standards. Elkhart County has hired additional attorneys, so Mr. Mason hopes their compliance issues will be rectified during the first couple quarters of 2021. Mr. Mason does not anticipate any additional needs from Elkhart County. Mr. Mason noted the following counties that each have one attorney out of compliance but no significant accompanying issues: Grant, Madison, Marion, and Washington. LaGrange County had compliance issues after a firm dropped its public defense contract last quarter and the county had to find another attorney to take up the contract. If the compliance issues continue next quarter, and the county does not have a plan in place, we may need to send a 90-day letter. Commission staff need additional data to determine whether the county’s solution is sufficient.

Chairman Rutherford invited questions or concerns regarding the above information. Regarding Lawrence County, Ms. Corley requested more specifics as to the purpose for the \$5000 stipend. Mr. Andis explained the stipend has been in the salary structure for a long time and was addressed with the original chief public defender. Mr. Andis thought the stipend had been discontinued but the Lawrence County Council agreed to put it back into the budget to get the chief public defender’s salary in parity with the prosecutor. Regarding Brown County, Ms. Corley thanked Mr. Mason for talking with Ms. Johnson and providing the status report. Ms. Corley explained that she finds what happened in Brown County very unsettling and she would like more discussion among the Commission to determine the best way to move forward. Ms. Corley wants to understand how the situation came about and acknowledged Mr. Mason’s suggestion to send the letter. Ms. Corley asked to have more discussion about the issue. Chairman Rutherford suggested putting the issue on the agenda to discuss at the June 2021 meeting. There were no further questions or concerns from the Commission members.

2. Requests for 40% Reimbursement in Non-Capital Cases (Agenda Item # 7)

Mr. Mason recommended reimbursement as provided in the following table:

INDIANA PUBLIC DEFENDER COMMISSION Fourth Quarter 2020 Requests for Reimbursements in Non-Capital Cases 3/19/2021

County	Total Expenditure	Non-reimbursable Adjustment	% Adjusted	Eligible Expenditure	4Q2020 Reimbursement	Prior Quarter Adjustment	Total Payment
Adams	\$116,115.54	\$21,487.81	18.51%	\$94,627.73	\$37,851.09		\$ 37,851.09
Allen	\$1,226,986.65	\$87,205.27	7.11%	\$1,139,781.38	\$455,912.55		\$ 455,912.55
Benton	\$46,607.75	\$24,634.05	52.85%	\$21,973.70	\$8,789.48	\$7,041.22	\$ 15,830.70
Blackford	\$46,902.95	\$15,209.66	32.43%	\$31,693.29	\$12,677.32		\$ 12,677.32
Brown	\$58,551.43	\$14,913.32	25.47%	\$43,638.11	\$17,455.24		\$ 17,455.24
Carroll	\$49,477.50	\$17,994.35	36.37%	\$31,483.15	\$12,593.26		\$ 12,593.26
Cass	\$178,928.43	\$24,162.87	13.50%	\$154,765.56	\$61,906.23		\$ 61,906.23
Clark	\$346,530.90	\$16,730.43	4.83%	\$329,800.47	\$131,920.19		\$ 131,920.19
Clinton	\$129,493.07	\$21,994.19	16.98%	\$107,498.88	\$42,999.55	-\$256.80	\$ 42,742.75
Decatur	\$101,033.55	\$15,311.22	15.15%	\$85,722.33	\$34,288.93	-\$50.00	\$ 34,238.93
Dekalb	\$216,591.64	\$21,149.80	9.76%	\$195,441.84	\$78,176.74		\$ 78,176.74

Delaware	\$348,240.47	\$5,322.19	1.53%	\$342,918.28	\$137,167.31		\$ 137,167.31
Elkhart	\$744,132.33	\$185,536.69	24.93%	\$558,595.64	\$223,438.25		\$ 223,438.25
Fayette	\$104,593.59	\$10,783.66	10.31%	\$93,809.93	\$37,523.97		\$ 37,523.97
Floyd	\$192,840.60	\$6,276.07	3.25%	\$186,564.53	\$74,625.81		\$ 74,625.81
Fountain	\$52,789.60	\$9,449.31	17.90%	\$43,340.29	\$17,336.12		\$ 17,336.12
Fulton	\$85,295.56	\$27,612.55	32.37%	\$57,683.01	\$23,073.20		\$ 23,073.20
Gibson	\$216,915.53	\$20,119.14	9.28%	\$196,796.39	\$78,718.56		\$ 78,718.56
Grant	\$266,101.36	\$7,175.37	2.70%	\$258,925.99	\$103,570.40	-\$2,502.28	\$ 101,068.12
Greene	\$168,161.94	\$26,855.00	15.97%	\$141,306.94	\$56,522.78		\$ 56,522.78
Hancock	\$203,822.94	\$5,637.36	2.77%	\$198,185.58	\$79,274.23		\$ 79,274.23
Harrison	\$53,061.10	\$9,613.16	18.12%	\$43,447.94	\$17,379.18		\$ 17,379.18
Hendricks	\$440,624.91	\$84,560.03	19.19%	\$356,064.88	\$142,425.95		\$ 142,425.95
Howard	\$505,964.03	\$41,936.10	8.29%	\$464,027.93	\$185,611.17		\$ 185,611.17
Jackson	\$187,198.20	\$9,640.57	5.15%	\$177,557.63	\$71,023.05		\$ 71,023.05
Jasper	\$80,427.44	\$13,281.31	16.51%	\$67,146.13	\$26,858.45		\$ 26,858.45
Jay	\$124,186.01	\$13,518.64	10.89%	\$110,667.37	\$44,266.95		\$ 44,266.95
Jefferson	\$178,676.35	\$40,470.32	22.65%	\$138,206.03	\$55,282.41		\$ 55,282.41
Jennings	\$127,555.38	\$17,532.20	13.74%	\$110,023.18	\$44,009.27	-\$558.63	\$ 43,450.64
Knox	\$219,324.98	\$43,968.72	20.05%	\$175,356.26	\$70,142.50		\$ 70,142.50
Kosciusko	\$216,413.31	\$67,061.14	30.99%	\$149,352.17	\$59,740.87		\$ 59,740.87
LaGrange	\$80,799.14	\$9,629.22	11.92%	\$71,169.92	\$28,467.97		\$ 28,467.97
Lake	\$1,237,810.63	\$10,427.79	0.84%	\$1,227,382.84	\$490,953.14		\$ 490,953.14
LaPorte	\$260,924.10	\$22,836.46	8.75%	\$238,087.64	\$95,235.05		\$ 95,235.05
Lawrence	\$233,981.26	\$28,309.83	12.10%	\$205,671.43	\$82,268.57		\$ 82,268.57
Madison	\$536,794.03	\$17,346.65	3.23%	\$519,447.38	\$207,778.95		\$ 207,778.95
Marion	\$6,466,519.26	\$674,191.44	10.43%	\$5,792,327.82	\$2,316,931.13	-\$121,663.76	\$ 2,195,267.37
Martin	\$52,716.15	\$12,442.36	23.60%	\$40,273.79	\$16,109.52		\$ 16,109.52
Miami	\$177,499.17	\$16,154.00	9.10%	\$161,345.17	\$64,538.07		\$ 64,538.07
Monroe	\$629,691.54	\$128,526.78	20.41%	\$501,164.76	\$200,465.91		\$ 200,465.91
Noble	\$256,215.95	\$47,219.40	18.43%	\$208,996.55	\$83,598.62		\$ 83,598.62
Ohio	\$24,856.05	\$5,085.37	20.46%	\$19,770.68	\$7,908.27		\$ 7,908.27
Orange	\$106,835.26	\$13,856.05	12.97%	\$92,979.21	\$37,191.68		\$ 37,191.68
Owen	\$85,806.56	\$16,025.63	18.68%	\$69,780.93	\$27,912.37		\$ 27,912.37
Parke	\$39,147.18	\$12,109.11	30.93%	\$27,038.07	\$10,815.23		\$ 10,815.23
Perry	\$59,509.75	\$10,608.98	17.83%	\$48,900.77	\$19,560.31		\$ 19,560.31
Pike	\$39,053.42	\$871.50	2.23%	\$38,181.92	\$15,272.77		\$ 15,272.77
Pulaski	\$96,517.09	\$19,723.98	20.44%	\$76,793.11	\$30,717.24		\$ 30,717.24
Ripley	\$57,343.27	\$5,369.15	9.36%	\$51,974.12	\$20,789.65		\$ 20,789.65
Rush	\$107,152.84	\$16,614.70	15.51%	\$90,538.14	\$36,215.25		\$ 36,215.25
Scott	\$174,223.79	\$17,721.86	10.17%	\$156,501.93	\$62,600.77		\$ 62,600.77
Shelby	\$223,731.33	\$24,685.70	11.03%	\$199,045.63	\$79,618.25		\$ 79,618.25
Spencer	\$84,849.96	\$3,932.20	4.63%	\$80,917.76	\$32,367.10		\$ 32,367.10
Steuben	\$106,633.34	\$25,546.01	23.96%	\$81,087.33	\$32,434.93		\$ 32,434.93
St. Joseph	\$661,747.32	\$65,879.07	9.96%	\$595,868.25	\$238,347.30		\$ 238,347.30
Sullivan	\$81,682.63	\$23,623.92	28.92%	\$58,058.71	\$23,223.48		\$ 23,223.48
Switzerland	\$72,026.75	\$15,224.83	21.14%	\$56,801.92	\$22,720.77		\$ 22,720.77
Tippecanoe	\$1,117,939.29	\$157,950.69	14.13%	\$959,988.60	\$383,995.44		\$ 383,995.44
Union	\$26,370.00	\$1,731.08	6.56%	\$24,638.92	\$9,855.57		\$ 9,855.57
Vanderburgh	\$834,792.10	\$53,831.89	6.45%	\$780,960.21	\$312,384.08		\$ 312,384.08
Vermillion	\$74,290.86	\$9,355.14	12.59%	\$64,935.72	\$25,974.29		\$ 25,974.29
Vigo	\$758,817.47	\$146,404.34	19.29%	\$612,413.13	\$244,965.25	-\$358.00	\$ 244,607.25

Wabash	\$77,326.12	\$15,856.47	20.51%	\$61,469.65	\$24,587.86	\$	24,587.86
Warren	\$24,464.93	\$3,043.50	12.44%	\$21,421.43	\$8,568.57	\$	8,568.57
Warrick	\$97,620.91	\$16,910.71	17.32%	\$80,710.20	\$32,284.08	\$	32,284.08
Washington	\$209,240.22	\$17,642.98	8.43%	\$191,597.24	\$76,638.90	\$	76,638.90
Totals	\$22,208,474.71	\$2,593,831.29		\$19,614,643.42	\$7,845,857.35	-\$118,348.25	\$ 7,727,509.10

The reimbursement requests totaled \$7,727,509.10 before adjustments. Mr. Mason described a change in the spreadsheet so that it shows prior quarter adjustments.

Mr. Mason explained there was a positive adjustment for Benton County and reminded the Commission it did not reimburse the county last quarter because they were unable to submit a reimbursement request due to COVID-related issues. To receive reimbursement for 3Q2020, the county requests reimbursement of \$7,041.22 be added to their reimbursement amount for 4Q2020. Mr. Mason further explained there were several adjustments reducing the amount to be reimbursed due to the ongoing desk audits. Mr. Mason discussed the \$121,663.76 adjustment for Marion County due to overpayment last quarter. The overpayment resulted from an error in our reimbursement form created specifically for Marion County and the county was not at fault. Mr. Mason confirmed the Marion County reimbursement form has been corrected.

Chairman Rutherford invited questions and objections from Commission members on the reimbursement requests. There were no questions or objections. The reimbursement requests passed as presented by Mr. Mason.

3. Approval of December 16, 2020 Meeting Minutes

Returning to the regular agenda, Chairman Rutherford invited questions, comments, concerns, and objections to the Minutes from the December 16, 2020 meeting. There were none. The Minutes were approved.

4. Approval of Amended Vigo County Comprehensive Plan

Mr. Mason explained the main purpose for the amended Comprehensive Plan was to update it from its original form. The amendment also addressed Vigo County's change from a part-time chief to a full-time chief. Ms. Etling confirmed Mr. Mason's explanation regarding the changes. Mr. Rutherford invited questions, concerns, and comments regarding the proposed amended Plan. There were no objections to approving Vigo County's proposed amended Comprehensive Plan and it was approved.

5. Legislative & Policy Update

Action Request: Mr. Cullen began by explaining an action request relating to the Coronavirus Fiscal Recovery Funds from the American Recovery Act and whether any of the state-level funds could be used to benefit public defense and the Commission. Mr. Cullen explained that a glut of cases not yet prosecuted due to the coronavirus could be filed once coronavirus restrictions are lifted, directly affecting public defense services. Mr. Cullen requested permission from the Commission to work with the State Budget Agency

toward creating a fund made up of Coronavirus Fiscal Recovery Funds the Commission could access to support public defense services throughout the State.

Chairman Rutherford invited comments, questions, and concerns. **[Judge Diekhoff joined the meeting at this point, 2:22 pm]** Rep. Lauer asked who Mr. Cullen had been working with legislatively regarding proposed language for the fund. Mr. Cullen explained he isn't working with any legislators yet and the first step will be to work with the State Budget Agency. Ms. Corley commented that the Council is working to put together a training for everyone who is responsible for public defender programs to help with accessing the funds made available to counties. Chairman Rutherford asked whether there were any objections to the proposal. There were no objections, but Rep. Lauer abstained from voting. The proposal was approved with one abstention.

Budget Proposal: Mr. Cullen reported the Commission's proposal has gone well and highlighted this being the first year since the Commission was established that its budget was included in the Governor's proposed budget. Mr. Cullen explained that HB1001, the Commission's primary legislative priority this session, is now pending before the Senate and Commission staff will continue to monitor its progress.

Misdemeanor Bill: Mr. Cullen reminded the Commission members that the Commission would support the misdemeanor bill if it continued to move through the legislature. Mr. Cullen reported the bill did not move and it is effectively dead for this session.

Public Defender Retirement Fund: Mr. Cullen referenced a bill introduced this session that would have allowed certain public defenders to participate in the Prosecutor/Judges' retirement fund. The bill did not receive a hearing. Mr. Mason explained the Commission has a 2012 guideline that public defender retirement and benefits are not included in Standard G. Mr. Mason anticipates the chief public defenders are planning to work on a proposal, including a financial analysis, regarding this issue for the June 2021 meeting. Mr. Mason expects the chief's proposal to help show how parity can be achieved between the two different retirement plans at issue here: PERF and PARF. Jim Abbs confirmed the chief's plan to bring numbers and additional conversation to the Commission at the June 2021 meeting regarding this issue. Mr. Abbs further stated he hopes to provide information to the Commission about a month prior to the meeting so the Commission can review the information in advance.

6. Local Public Defender Board Appointments

Those being presented for consideration as public defender board appointees were as follows:

County:	Candidate:
Lawrence	Tonja Kinder (consensus)
Fayette	Brayton Johns / Dale Lanning (not consensus)
Montgomery	David Long / David Hadley (not consensus)

Lawrence County: Mr. Cullen recommended making the interim appointment, Tonja Kinder, permanent for a 3-year term. There were no questions, comments, or objections regarding appointing Ms. Kinder. She was appointed for the 3-year term.

Fayette County: Mr. Cullen explained that Dale Lanning is presently the judicial appointee to the board. The president of the county commissioners and the public defender board chair recommended the Commission appoint Mr. Lanning as the Commission's appointee. Because Mr. Lanning was formerly a judicial appointment, this is the first time the Commission has considered his appointment. Mr. Cullen stated Commission staff are concerned because Mr. Lanning is a bail agent, he may have a conflict of interest with serving as a public defender board member.

Because Commission staff did not receive any additional recommendations for potential board members from the county, Mr. Cullen explained that he contacted former State Rep. Jud McMillin and asked for any recommendations. Mr. McMillin recommended Brayton Johns, a current law student intending to practice law in Fayette County. Mr. McMillin offered to mentor Mr. Johns in this role. Mr. Cullen noted that appointing Mr. Johns would allow the Commission to appoint a new person with a new perspective who could be a long-term asset to the board. Mr. Cullen acknowledged that appointing Mr. Johns to the board in lieu of Mr. Lanning would contravene the county's recommendations.

Chairman Rutherford invited questions and comments regarding this issue. Ms. Corley asked whether Commission staff had any information regarding Mr. Lanning's performance or conduct while serving on the board. Mr. Cullen referred to Mr. Lanning's recommendations included in the materials stating that Mr. Lanning is familiar with the system from being a bail agent and, from the county commissioners, stating Mr. Lanning has served to their satisfaction, he is willing to continue to serve, and they saw no reason to change the composition of the board. That was the extent of the information Commission staff received. Ms. Corley acknowledged she does not see Mr. Lanning's profession as a total exclusion to serving as a board member. She would like to have further information regarding his activities on the board before deciding this issue. She asked whether his nomination needed to be decided at this meeting

Judge Hanlon asked whether the Commission had heard from any of the local public defenders regarding Mr. Lanning. Mr. Cullen answered the Commission had not and offered to ask the public defenders for their comments. Judge Hanlon acknowledged she understands the concern about a conflict, particularly if, for example, the board was considering a pre-trial release program, but, like Ms. Corley, did not want to disregard the unanimous local recommendation. Judge Hanlon would like input from the public defenders who practice in the county as to this issue.

Mr. Bray commented he would oppose Mr. Lanning's appointment based on a perception that Mr. Lanning would have a vested interest in having control on the board. Judge Hanlon indicated she understood Mr. Bray's concern.

Mr. Hensel noted that those who recommended Mr. Lanning may not have anticipated the Commission's hesitation regarding a potential conflict due to his job as a bail agent, and he stated that he would like to hear whether they would have any cautions

about his ability to carry out the responsibilities of this position. Judge Diekhoff expressed her agreement with the previous comments, cautioned against rejecting someone who has been fulfilling his responsibilities on the county board, and agreed the Commission would benefit from additional information before deciding this issue. Mr. Cullen therefore recommended the Commission take no action so he could gather additional information.

Mr. Abbs expressed his concern with having a bail agent serve on the public defender board, noting that he would consider it to be an inherent conflict that could arise based upon his experience in a similar situation in Noble County.

Chairman Rutherford invited additional comments and concerns. Recognizing that Mr. Cullen was going to solicit further comments and perspectives, Judge Hanlon recommended that Mr. Cullen specifically ask those who recommended Mr. Lanning whether they believe he would have conflicts of interest on issues such as pre-trial release.

Ms. Corley moved to table this decision until the June 2021 meeting to allow Commission staff to reach out to Fayette County public defenders and to those who recommended Mr. Lanning to inquire about his performance so the Commission can receive more information for purposes of considering him. Mr. Hensel asked Commission staff to be clear when reaching out that some Commission members are concerned about potential conflict with a bail agent serving on the public defender board. Judge Hanlon seconded the motion.

Chairman Rutherford restated the motion: The Commission Board will do further investigation on Mr. Lanning, reaching out to those who recommended him and inquiring regarding his previous service, while specifying the Commission's concerns, and also contacting public defenders who practice in Fayette County about any concerns that they may have. There were no objections, and the motion was approved.

Montgomery County: Mr. Cullen reported that current board member, David Hadley, comes recommended for reappointment by the judges and by the current public defender board chair. He has a strong resume, he understands the judicial system, and he seems very dedicated. A second candidate, David Long, also contacted Commission staff for consideration. Mr. Cullen believes Mr. Long would also be a strong candidate. Mr. Cullen explained that Montgomery County has not sought reimbursement since 2013, and Commission staff does not know if the county is currently compliant with our standards. Mr. Cullen stated the question is: Does the Commission want to (1) reappoint the current board member and possibly maintain the status quo as to non-participation; or (2) go in a different direction and appoint someone new who might facilitate change in Montgomery County's participation?

Mr. Mason explained that in 2013 compliance issues arose with this county and the Commission withheld reimbursement. The county officially stopped submitting reimbursement requests in 2014. Mr. Cullen asked Mr. Hadley why the county was not seeking reimbursement. Mr. Hadley reported to Mr. Cullen that there was no will on part of the county council to seek reimbursement. Mr. Cullen additionally asked Mr. Hadley if the board had made efforts to change the county council's will. Mr. Hadley answered they had not, as the board had been informed consistently from the county's managing public

defender that it was simply not an option to participate in the Commission's reimbursement program. It is Mr. Cullen's impression that Mr. Long expressed an interest in trying to bring Montgomery County back into active status with the Commission's reimbursement.

Chairman Rutherford invited questions, comments, and concerns. Mr. Cullen stated he did not feel comfortable making a recommendation. Ms. Corley said she does not feel ready to vote on this issue. She acknowledged the strong support from the county but expressed concern about the county not seeking reimbursement. Ms. Corley said she wants more info on the second candidate and his perspective on public defense. Ms. Corley asked to delay this decision to the June meeting as well.

Judge Hanlon inquired whether this opening would lead to a vacancy on the county board. Mr. Cullen affirmed that there would be a holdover member until a new member is appointed. Mr. Cullen asked what specific information the Commission would like him to pursue. Ms. Corley stated she wants to understand from Mr. Long what attracts him to the public defender board position and what he hopes to accomplish in the role. Chairman Rutherford said the Commission also wants to know from Mr. Hadley what he plans to do to get the county back into participation with the Commission and how he would approach that goal. Mr. Cullen suggested developing a list of questions for both candidates to answer in writing, which he would then share with the Commission. Ms. Corley voiced her approval for the plan. Mr. Cullen stated he would follow this approach for both Montgomery as well as Fayette County.

Chairman Rutherford summarized the proposal as tabling the Montgomery County appointment process until the June meeting to allow Commission staff to gather additional information by submitting the same written questions to each Montgomery County candidate to allow them to report their perspectives on public defense, their views on once again seeking reimbursement from the Commission, and how they would pursue that goal. There were no objections. The motion was approved.

7. Financial Status of Public Defense Fund

Mr. Mason provided the status of the Fund. Regarding DCS payments, Mr. Mason reported that federal funds passed through from DCS paid \$143,000.83 last quarter. Additionally, Mr. Mason anticipates the Commission receiving a projected \$626,871.68 over the next four quarters, including this quarter, from DCS. Mr. Mason hopes to present pilot projects at the June 2021 meeting and to fund those projects with the money received from DCS. There were no questions, comments, or concerns from Commission members.

8. Commission Staff Update

Mr. Mason encouraged everyone to come to the June 2021 meeting. Topics expected to be covered are: PARF/PERF, pilot projects, the Commission's budget, suggested recommendations for workload changes with information to submit to the public for public comment. Mr. Mason discussed the county breakdowns for reimbursement and invited comments from Commission members regarding whether those pages are useful to them.

Mr. Mason also inquired as to the information members would like to see included on those pages.

9. Other Matters

There were no additional matters.

Mr. Bray moved to adjourn. There were no objections. The meeting adjourned at 3:01 pm.

INDIANA PUBLIC DEFENDER COMMISSION

June 16, 2021

2:00 PM

**309 W. Washington, 5th Floor, Commission Conference Room
Indianapolis, Indiana 46204**

Members in attendance:

Mr. Mark W. Rutherford, Chair (in person)
Mr. Richard Bray (in person)
Ms. Bernice Corley (remote)
Hon. Mary Ellen Diekhoff (remote)
Rep. Ragen Hatcher (remote)
Hon. Kelsey B. Hanlon (remote)
Mr. David J. Hensel (remote)
Rep. Ryan Lauer (remote)
Hon. Steven P. Meyer (remote)
Sen. Gregory G. Taylor (remote)

Members absent:

Sen. Eric Koch

Staff in attendance:

Derrick Mason (in person)
Andrew Cullen (in person)
Torrin Liddell (remote)
Andrew Falk (remote)
Jennifer Shircliff (remote)
Paula Diaz (remote)

Audience members (all remote):

Jim Abbs, Noble County Chief Public Defender and President of Indiana Chief Public Defender Association
Bruce Andis, Lawrence County Chief Public Defender
Greg Bowes, Attorney
Ray Casanova, Marion County Public Defender Agency
Victoria Casanova, Private Practitioner
Ruth Johnson, Brown County Public Defender Board Chair
Amy Karozos, State Public Defender
Lisa Moody, Gibson County Chief Public Defender
Barbara Simmons, Ripley County Public Defender

At two o'clock, Senior Staff Attorney Derrick Mason recognized that a quorum of the Commission was present and called the roll of the members. Guests introduced themselves.

Members of the Commission went into a remote Zoom breakout room for the scheduled Executive Session for a Commission staff job performance discussion. Following the Executive Session, Chair Mark Rutherford called the public portion of the meeting to order at 3:20 p.m.

Chairman Rutherford stated that two Commission members had motions to make in open session. First, Sen. Taylor moved to increase Derrick Mason's salary to \$136,000, beginning July 1, 2021. Judge Hanlon seconded the motion. There was no discussion. The Chair called the roll, and the vote was as follows:

Judge Hanlon: yes
Judge Meyer: no
Judge Diekhoff: yes
Sen. Taylor: yes
Rep. Lauer: no
Rep. Hatcher: yes
Ms. Corley: yes
Mr. Bray: no
Mr. Hensel: yes

The Chair abstained. The motion passed 6-3.

The Chair indicated that he thought Mr. Mason's title should change. Judge Hanlon moved to change Mr. Mason's title to Director & Chief Counsel. Judge Diekhoff seconded the motion. There was neither discussion nor objection. The motion passed.

The Chair stated that due to the anticipated length of the meeting, the Commission would next proceed to Agenda Item Number 6, Status of County Compliance. There were no objections.

6. Status of County Compliance

A. Brown County

Mr. Mason introduced Ruth Johnson, Brown County Public Defender Board Chair. Ms. Johnson provided a brief background concerning the Brown County Sheriff's Department investigating a Brown County public defender for his client representation and billing practices. This ongoing Brown County issue has been described to the Commission in previous meetings. The most significant update is that the public defender at the heart of the investigation, Greg Bowes (in attendance today), has resigned as a Brown County public defender. Due to what the Brown County Public Defender Board finds to be significant threats to the independence of Brown County public defenders, Ms. Johnson does not believe she can certify the County is in compliance with its requirements such that it can be reimbursed by the Commission for its public defense expenses. She noted that Brown County has had compliance issues before and that funding has been withheld until the County became compliant. Ms. Johnson recommends that action again and asks the Commission to decline reimbursement to the county until the County signs a document acknowledging the independence of the County Public Defender Board and its attorneys.

Several Commission members expressed frustration with what Brown County has done but questioned whether Ms. Johnson's solution was best. Judge Meyer asked whether, as one section of the document required, the Commission should require the County public defender Board to review allegedly criminal behavior. Mr. Hensel asked whether the Commission has the authority to require the County to make these acknowledgements. Judge Hanlon opined that this situation seemed unprecedented, and asked Mr. Mason whether anything similar had ever occurred. He responded that he had not seen anything like this. Ms. Corley stated that this was "gut-wrenching." She and Mr. Abbs both argued that withholding funds was the only stick the Commission has to force Brown County to address the issue. Sen. Taylor asked whether the proposed action would bear the intended fruit. Mr. Cullen suggested the Commission could seek a legislative solution such as requiring the State Police to investigate any such situations, removing the jurisdiction of local law enforcement.

Judge Meyer moved to send a letter to Brown County and withhold reimbursement from the county for 1Q2021 at least until the Commission's September 2021 meeting to allow Commission staff to research additional consequences that may be imposed. Ms. Corley seconded the motion. Judge Diekhoff questioned whether the letter would state how inappropriate the County's actions have been. Judge Meyer affirmed that it should.

Judge Hanlon inquired whether Judge Meyer would accept a friendly amendment to state that a 90-day letter would be sent, staying reimbursement until Brown County would explain how this situation would never again occur. Judge Meyer said he was open to such a friendly amendment. Ms. Corley moved to amend Judge Meyer's motion accordingly. Judge Hanlon seconded the motion to amend. There was no further discussion. The motion to amend was approved.

There was no further discussion on Judge Meyer's motion. The motion was approved.

B. Other County Updates

Mr. Mason noted that there may be other pay parity issues. Clark County has been paying its chief public defender \$141,000 for years, and thus has not been in compliance during that time. He recommended that the county be given until January 1, 2022, to come into compliance or lose reimbursement for the chief's salary.

There were no objections to the recommendation, and the recommendation was approved.

Mr. Mason noted that Ohio County has been paying defenders less than \$12,000 for 0.5 FTE. He recommended that staff investigate the issue and send a letter requiring pay parity compliance if there is indeed a pay parity issue.

There were no objections to the recommendation, and the recommendation was approved.

Mr. Mason discussed a multi-county issue, and for the first time recommended a 90-day letter be sent for such an issue. Three counties (Ripley, Fayette, and Decatur) are all using one attorney for a combined usage above the caseload requirements. Mr.

Mason recognized it is hard for counties to find attorneys, that Indiana has a shortage of attorneys, and that counties need to pay more to find and keep attorneys.

Mr. Mason recommended a 90-day letter for all three counties, requiring a plan to be put in place to resolve this issue.

Judge Meyer asked whether the Commission could make an exception for small counties who have trouble keeping attorneys. Mr. Mason replied the Commission could modify its standards, but such modification would be the required course.

Judge Hanlon opined that this is a problem that is only going to get worse. She argued the Commission needs to be careful not to price counties out of this program. Where the State pays for the top prosecutors in each county, but not the top public defenders, many small counties do or will face increasing challenges.

Ms. Corley asked if creating a multi-county regional office would help. Mr. Mason responded that it could, but it could also cost more, and creating a multi-county regional office would not necessarily resolve the issue. Ms. Corley stated it might be time to ask the state to pay for the top two public defenders in each county. Judge Hanlon agreed, stating that might be more important than misdemeanor reimbursement.

After this discussion, there were no objections to the staff recommendation to send a 90-day letter to the three counties, and the recommendation was approved.

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

Mr. Mason reminded the Commission that Brown County's reimbursement would be withheld, thus making the total reimbursement \$7,402,378.55. Mr. Mason recommended reimbursement as provided in the following table, minus Brown County's reimbursement amount:

INDIANA PUBLIC DEFENDER COMMISSION

First Quarter 2021 Requests for Reimbursements in Non-Capital Cases

6/16/2021

County	Total Expenditure	Non-reimbursable Adjustment	% Adjusted	Eligible Expenditure	1Q2021 Reimbursement	Prior Quarter Adjustment	Total Payment
Adams	\$110,123.48	\$19,468.82	17.68%	\$90,654.66	\$36,261.86		\$ 36,261.86
Allen	\$1,130,865.31	\$95,558.38	8.45%	\$1,035,306.93	\$414,122.77		\$ 414,122.77
Benton	\$28,930.00	\$9,663.00	33.40%	\$19,267.00	\$7,706.80		\$ 7,706.80
Blackford	\$50,614.00	\$3,872.92	7.65%	\$46,741.08	\$18,696.43		\$ 18,696.43
Brown	\$49,133.17	\$11,938.29	24.30%	\$37,194.88	\$14,877.95		\$ -
Carroll	\$61,001.40	\$23,535.59	38.58%	\$37,465.81	\$14,986.33		\$ 14,986.33
Cass	\$177,778.42	\$23,522.07	13.23%	\$154,256.35	\$61,702.54		\$ 61,702.54
Clark*	\$392,265.60	\$17,593.18	4.49%	\$374,672.42	\$149,868.97		\$ 134,926.03
Clinton	\$70,318.74	\$20,049.79	28.51%	\$50,268.95	\$20,107.58		\$ 20,107.58
Decatur	\$99,154.37	\$20,880.89	21.06%	\$78,273.48	\$31,309.39		\$ 31,309.39
Dekalb	\$180,380.14	\$15,811.00	8.77%	\$164,569.14	\$65,827.66		\$ 65,827.66
Delaware	\$364,992.15	\$892.04	0.24%	\$364,100.11	\$145,640.04		\$ 145,640.04
Elkhart	\$747,924.02	\$145,353.93	19.43%	\$602,570.09	\$241,028.04		\$ 241,028.04
Fayette	\$91,483.85	\$12,028.91	13.15%	\$79,454.94	\$31,781.98		\$ 31,781.98
Floyd	\$189,502.31	\$10,120.95	5.34%	\$179,381.36	\$71,752.54		\$ 71,752.54
Fountain	\$24,530.67	\$3,603.21	14.69%	\$20,927.46	\$8,370.98		\$ 8,370.98
Fulton	\$82,307.92	\$20,805.91	25.28%	\$61,502.01	\$24,600.80		\$ 24,600.80
Gibson	\$149,437.31	\$20,591.31	13.78%	\$128,846.00	\$51,538.40		\$ 51,538.40
Grant	\$236,858.59	\$2,798.45	1.18%	\$234,060.14	\$93,624.06		\$ 93,624.06
Greene	\$141,873.80	\$22,034.49	15.53%	\$119,839.31	\$47,935.73		\$ 47,935.73
Hancock	\$124,115.21	\$5,114.36	4.12%	\$119,000.85	\$47,600.34		\$ 47,600.34
Harrison	\$113,652.45	\$8,743.02	7.69%	\$104,909.43	\$41,963.77		\$ 41,963.77
Hendricks	\$448,766.00	\$83,488.31	18.60%	\$365,277.69	\$146,111.07		\$ 146,111.07
Howard	\$493,510.77	\$47,002.93	9.52%	\$446,507.84	\$178,603.14		\$ 178,603.14
Jackson	\$211,530.06	\$8,575.63	4.05%	\$202,954.43	\$81,181.77		\$ 81,181.77
Jasper	\$63,158.86	\$15,772.44	24.97%	\$47,386.42	\$18,954.57		\$ 18,954.57
Jay	\$114,015.54	\$13,354.04	11.71%	\$100,661.50	\$40,264.60		\$ 40,264.60
Jefferson	\$211,993.10	\$35,636.64	16.81%	\$176,356.46	\$70,542.59		\$ 70,542.59
Jennings	\$128,133.40	\$18,088.88	14.12%	\$110,044.52	\$44,017.81		\$ 44,017.81
Knox	\$223,913.43	\$53,314.33	23.81%	\$170,599.10	\$68,239.64		\$ 68,239.64
Kosciusko	\$298,972.78	\$88,215.79	29.51%	\$210,756.99	\$84,302.80		\$ 84,302.80
LaGrange	\$61,149.23	\$8,828.96	14.44%	\$52,320.27	\$20,928.11		\$ 20,928.11
Lake	\$1,421,875.93	\$17,803.24	1.25%	\$1,404,072.69	\$561,629.07	\$25,912.47	\$ 587,541.54
LaPorte	\$272,935.39	\$20,285.78	7.43%	\$252,649.61	\$101,059.85		\$ 101,059.85
Lawrence	\$243,488.57	\$39,894.08	16.38%	\$203,594.49	\$81,437.80		\$ 81,437.80
Madison	\$474,341.03	\$10,373.22	2.19%	\$463,967.81	\$185,587.13		\$ 185,587.13
Marion	\$5,803,707.29	\$562,805.47	9.70%	\$5,240,901.82	\$2,096,360.73		\$ 2,096,360.73
Martin	\$64,209.55	\$14,043.91	21.87%	\$50,165.64	\$20,066.26		\$ 20,066.26
Miami	\$186,687.70	\$26,923.12	14.42%	\$159,764.58	\$63,905.83		\$ 63,905.83
Monroe	\$576,392.70	\$71,716.61	12.44%	\$504,676.09	\$201,870.44		\$ 201,870.44
Noble	\$237,137.35	\$42,710.18	18.01%	\$194,427.17	\$77,770.87		\$ 77,770.87
Ohio	\$18,354.81	\$1,645.11	8.96%	\$16,709.70	\$6,683.88		\$ 6,683.88
Orange	\$108,786.51	\$29,390.36	27.02%	\$79,396.15	\$31,758.46		\$ 31,758.46
Owen	\$61,299.42	\$10,897.42	17.78%	\$50,402.00	\$20,160.80		\$ 20,160.80
Parke	\$44,253.86	\$9,307.58	21.03%	\$34,946.28	\$13,978.51		\$ 13,978.51
Perry	\$25,889.68	\$2,502.92	9.67%	\$23,386.76	\$9,354.70		\$ 9,354.70
Pike	\$36,921.29	\$1,109.60	3.01%	\$35,811.69	\$14,324.68		\$ 14,324.68
Pulaski	\$86,146.68	\$14,854.67	17.24%	\$71,292.01	\$28,516.80		\$ 28,516.80
Ripley	\$52,463.35	\$8,472.85	16.15%	\$43,990.50	\$17,596.20		\$ 17,596.20
Rush	\$94,219.55	\$17,455.13	18.53%	\$76,764.42	\$30,705.77		\$ 30,705.77
Scott	\$105,745.55	\$12,260.68	11.59%	\$93,484.87	\$37,393.95		\$ 37,393.95
Shelby	\$142,365.97	\$24,815.29	17.43%	\$117,550.68	\$47,020.27		\$ 47,020.27
Spencer	\$105,280.83	\$11,510.09	10.93%	\$93,770.74	\$37,508.30		\$ 37,508.30
Steuben	\$129,202.77	\$43,923.10	34.00%	\$85,279.67	\$34,111.87		\$ 34,111.87
StJoseph	\$610,910.81	\$57,790.82	9.46%	\$553,119.99	\$221,248.00		\$ 221,248.00
Sullivan	\$50,824.55	\$7,663.78	15.08%	\$43,160.77	\$17,264.31		\$ 17,264.31
Switzerland	\$45,664.45	\$9,027.78	19.77%	\$36,636.67	\$14,654.67		\$ 14,654.67
Tippecanoe	\$964,021.94	\$139,718.13	14.49%	\$824,303.81	\$329,721.53		\$ 329,721.53
Union	\$14,166.00	\$1,632.36	11.52%	\$12,533.64	\$5,013.46		\$ 5,013.46
Vanderburgh	\$743,927.26	\$49,225.43	6.62%	\$694,701.83	\$277,880.73		\$ 277,880.73
Vermillion	\$63,708.62	\$9,514.21	14.93%	\$54,194.41	\$21,677.77		\$ 21,677.77
Vigo	\$741,924.13	\$109,484.53	14.76%	\$632,439.60	\$252,975.84		\$ 252,975.84
Wabash	\$111,439.80	\$15,146.42	13.59%	\$96,293.38	\$38,517.35		\$ 38,517.35
Warren	\$7,077.00	\$2,528.00	35.72%	\$4,549.00	\$1,819.60		\$ 1,819.60
Warrick	\$166,032.89	\$17,838.59	10.74%	\$148,194.30	\$59,277.72		\$ 59,277.72
Washington	\$150,639.32	\$18,182.42	12.07%	\$132,456.90	\$52,982.76		\$ 52,982.76
Totals	\$20,834,428.63	\$2,318,711.34		\$18,515,717.29	\$7,406,286.97	\$25,912.47	\$ 7,402,378.55
*Proposed Reduction for Chief Benefits & Salary in Clark:				\$ 14,942.94			\$ 7,387,435.61

Judge Meyer moved to reimburse the counties in the amount of \$7,402,378.55. Judge Diekhoff seconded the motion. There were no objections, and the motion passed.

2. Approval of Minutes of the March 19, 2021 Meeting

The Chair inquired whether there were any corrections or changes to the Minutes from the March 19, 2021 meeting. There were none. The minutes were approved.

3. FY 22 Internal Budget and “At Risk Youth & Family” Funding

A. Internal Budget

Mr. Mason reminded the Commission that Commission staff use an internal budget for operating expenses. For Fiscal Year 2022, the budget approved was as follows:

FY2021-2022 Budget	Budget Amount	
Payroll	\$ 861,868.12	
Travel	\$ 16,000.00	
Interagency Charges (IOT, etc.)	\$ 20,000.00	
Rentals	\$ 39,000.00	
Admin Ops/Supplies/Misc.	\$ 15,000.00	
Contractual	\$ -	
Subtotal	\$ 951,868.12	2.87%
Remaining for Reimbursements	\$ 32,168,131.88	97.13%

The above includes the salary adjustment for Mr. Mason, implementation of salary parity for the remainder of staff, restores sums from COVID shrink-down including allowing for conferences, increased rent, etc. The Chair noted that 97% still goes back to the counties. Mr. Mason clarified that Title IV funds are not included in this amount, so actually more than 97% goes to county reimbursements.

Mr. Hensel moved to approve the internal budget. Sen. Taylor and Judge Hanlon seconded the motion. There were no objections. The motion was approved.

B. Title IV Funds

Mr. Mason stated that the Commission is looking for a county partner to use Title IV funds.

Judge Diekhoff moved to approve Mr. Mason's recommendation for use of the Title IV funds. Judge Hanlon seconded the motion. Judge Hanlon clarified that the money is not earmarked for child welfare.

There were no objections. The motion was approved.

C. Title IV Funds (part 2)

Mr. Mason informed the Commission that two million dollars have been allocated to the Commission for children. A pilot program that the Commission would lead was specifically discussed on the Senate floor. One proposal is to embed experts with public defenders, where the support individuals (support staff or social workers) could attend meetings or hearings with or on behalf of attorneys and support parents. Vigo and Monroe Counties are interested. Pilot programs have been started in Colorado, with good results: children have been reunified with parents faster.

Senator Taylor asked if the program should be piloted in Marion County, where similar programs already exist. Mr. Mason explained that because Marion County already has a program, Commission staff are interested in starting with a clean slate and showing counties how effective the program can be.

In response to Commission member questions, Mr. Mason explained that the social worker would be working for the public defenders. The program would assist and supplement civil legal aid funding. It is a holistic program that would start at the time children are being considered to be CHINS. The Commission wants to hire a social worker once it's confirmed with DCS that the money will be available.

There were no objections on hiring a Commission staff person with Title IV dollars.

4. Chief Public Defender Salary & Effective Date

Mr. Mason explains the Chief Public Defender salary is required to be in parity with local prosecutors. Judge Hanlon stated that she thinks the issue of parity needs to be readdressed.

There were no questions or concerns, or objections. The staff recommendation passed without objection.

Mr. Abbs, when asked, stated that the Chief Public Defender concerns (original Agenda items 13 – 14) could be tabled until the September meeting, and could possibly be resolved with Commission staff.

8. Local Public Defender Board Appointments

Mr. Cullen first discussed the consensus candidates. From Montgomery County, one of the nominees, David Long, did not respond to Mr. Cullen's inquiries for more information; David Hadley is thus the consensus nominee. There were 4 additional consensus candidates, which staff recommended: Lawrence County (Gerald Hill); Adams County (Tony Mellencamp); Ripley County (Elizabeth Baumgartner); and Tippecanoe County (Marcel Katz).

Judge Hanlon moved to appoint all the consensus candidates; Mr. Bray seconded the motion. There were no objections; the consensus candidates were appointed to 3-year terms effective immediately.

With regard to Fayette County, where there was a contested appointment, Mr. Cullen explained that Dale Lanning has been unanimously recommended by local officials but that he is a bail agent in the county. As discussed in a Commission Staff Attorney memorandum, staff believes there is an innate conflict of interest.

Ms. Corley moved that the Commission appoint Brayton Johns, the staff recommendation. Judge Diekhoff seconded the motion. There were no objections. Mr. Johns was appointed to a 3-year term effective immediately.

Due to time constraints, and two members who had left the meeting, it was decided to table the remaining agenda items until a special meeting in July. The date and time for the special meeting will be Wednesday, July 21, 2021, at 2 p.m.

The meeting was adjourned at 5:01 p.m.

INDIANA PUBLIC DEFENDER COMMISSION

July 21, 2021

2:00 PM

**309 W. Washington, 5th Floor, Commission Conference Room
Indianapolis, Indiana 46204**

Members in attendance:

Mark W. Rutherford, Chair (in person)
Mr. Richard Bray (in person)
Ms. Bernice Corley (remote)
Hon. Mary Ellen Diekhoff (remote)
Hon. Kelsey B. Hanlon (remote)
Mr. David J. Hensel (remote)
Sen. Eric Koch (remote)
Rep. Ryan Lauer (remote)

Members absent:

Rep. Ragen Hatcher
Hon. Steven P. Meyer
Sen. Gregory G. Taylor

Staff in attendance:

Derrick Mason (in person)
Andrew Cullen (in person)
Paula Diaz (in person)
Andrew Falk (remote)
Torrin Liddell (remote)
Jennifer Pinkston (remote)
Jennifer Shircliff (remote)

Audience members (all remotely):

Ray Casanova, Marion County Public
Defender Agency
Victoria Casanova, appellate attorney
Jen Harmeyer, Acting Chief, Clark
County
Alexis Meyers, Senate Democrats Legal
Intern
Andrew Vandenbosh, Howard County
Chief Public Defender
Joel Wieneke, Public Defender Council

At two o'clock, Chair Mark Rutherford called the meeting to order. The Commission's Director & Chief Counsel, Derrick Mason, called the roll and determined that a quorum was present. Mr. Mason also introduced Commission staff. Audience members introduced themselves.

1. Approval of the June 16, 2021 Meeting Minutes

The Chair inquired whether there were any corrections or changes to the minutes from the June 16, 2020, meeting. Mr. Bray requested that on page 9, regarding the vote to appoint Brayton Johns to the Fayette County Public Defender Board, Mr. Bray's vote be changed from "abstain" to "in favor." There were no objections to this change.

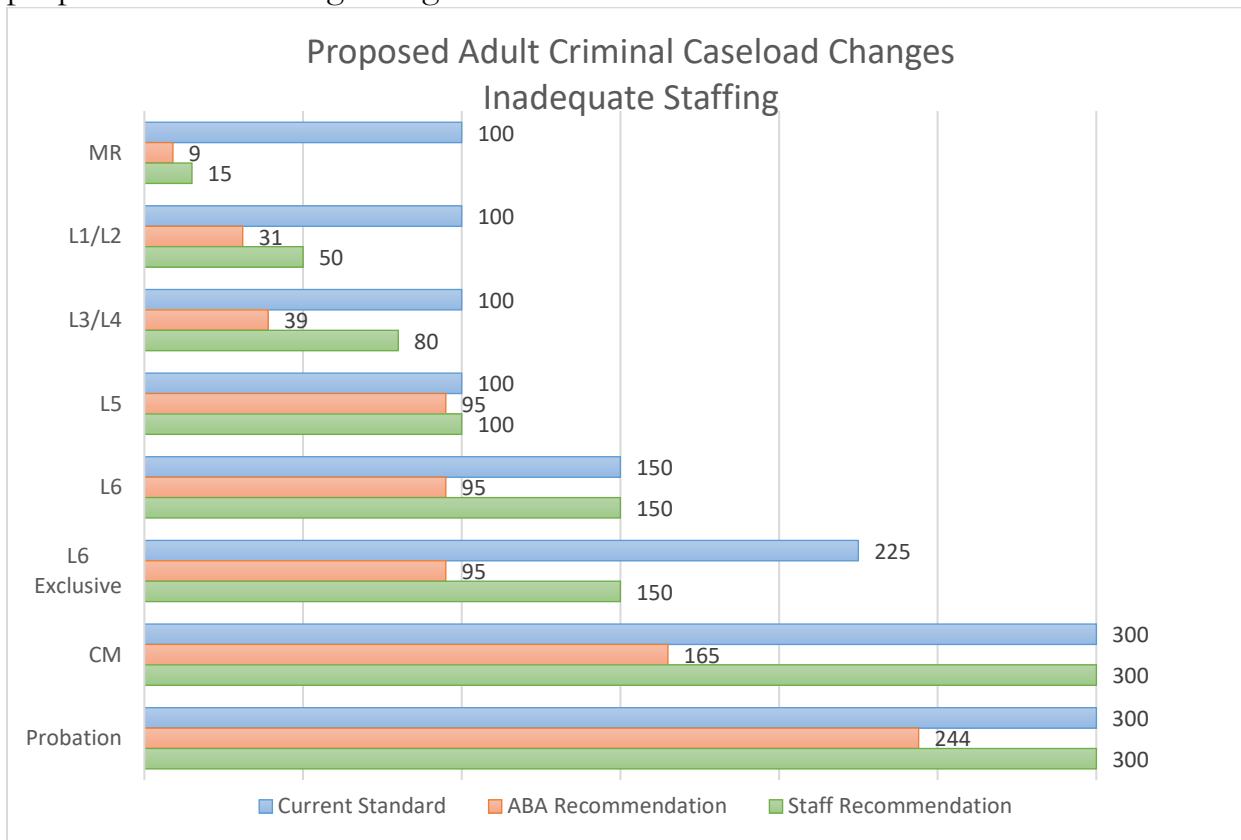
The Chair inquired if there were any objections to approving the minutes. Sen. Koch abstained from the vote because he had not been present at the June 16, 2021 meeting. There were no objections. The minutes were approved, with one abstention.

2. Submit for Public Comment: Caseload Revision Recommendations

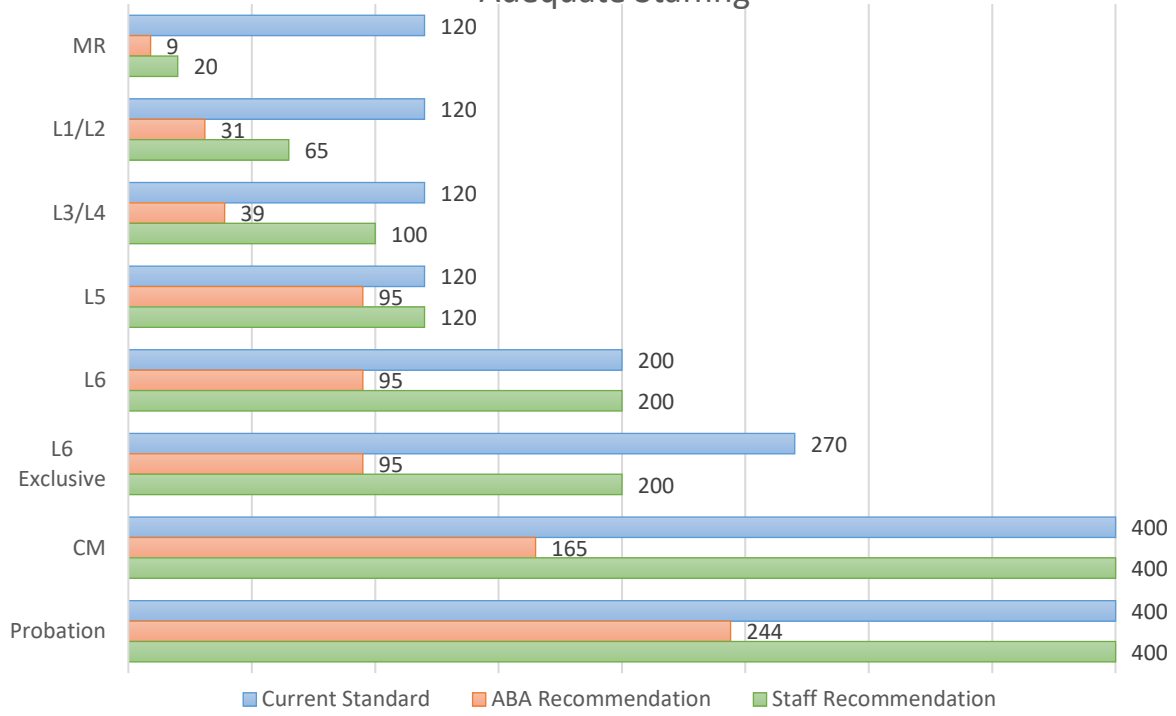
Mr. Mason explained that "submit for public comment" means Commission staff will post the proposed revisions to the Commission website and publish them in the newsletter. He and Dr. Liddell are also working to identify the likely impact of the proposed revisions to each county. Commission staff will then send customized letters to county public defender boards, chiefs, and other stakeholders so they can provide informed comments.

The Commission received the final ABA/Crowe Workload Study almost one year ago. The study proposed significant changes to Commission workload standards. As Commission staff reviewed the proposed changes, staff recognized it would take time to fully implement the changes because the counties would need time to come into compliance. Commission staff further recognized the need to make the most significant changes possible without inciting too much pushback from counties.

Mr. Mason observed that one of the most significant changes is the Commission’s Level 6 workload standard. Whereas Indiana’s current workload allows for an attorney who is receiving only Level 6 felonies to be assigned 270 cases (with adequate staffing), the proposed ABA/Crowe study proposes a workload limit of 95 cases. The Commission is proposing a limit of 200 cases. Mr. Mason further observed that imposing the same workload for all major felony cases (Murder through Level 5) in the existing standards is also inappropriate. To address these issues, staff proposed the following changes:



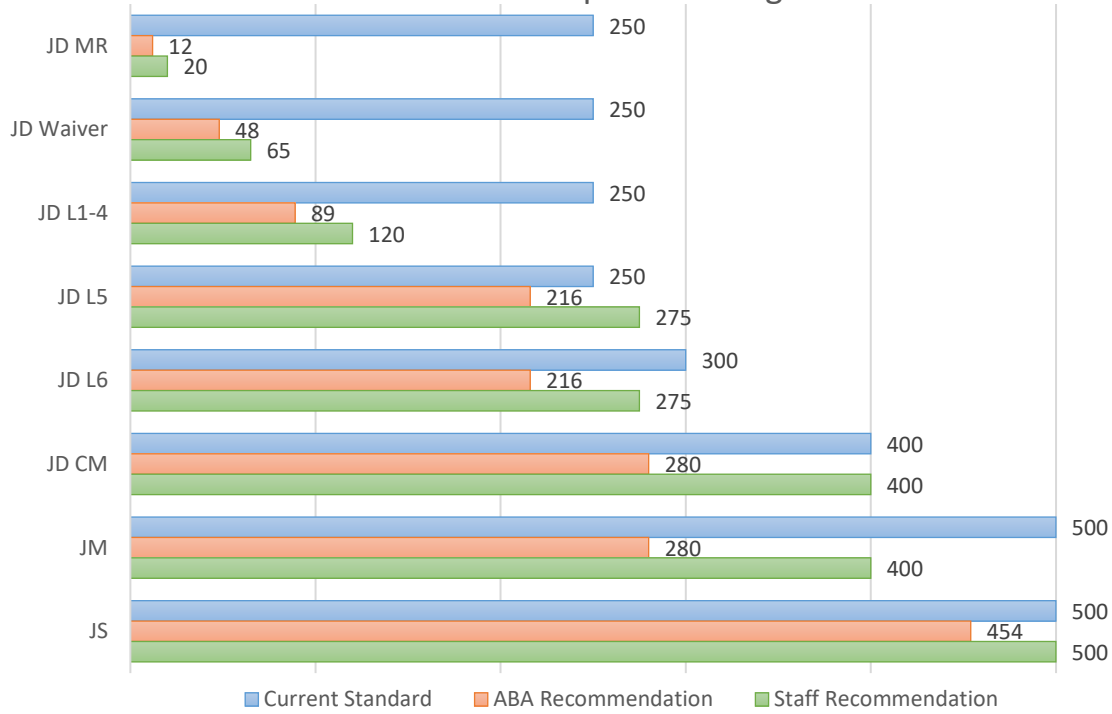
Proposed Adult Criminal Caseload Changes Adequate Staffing



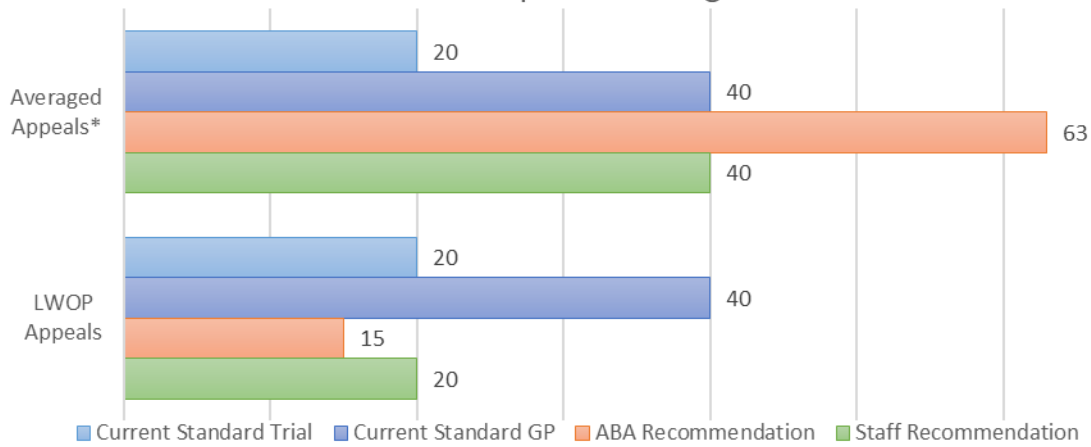
Proposed Juvenile Caseload Changes Inadequate Staffing

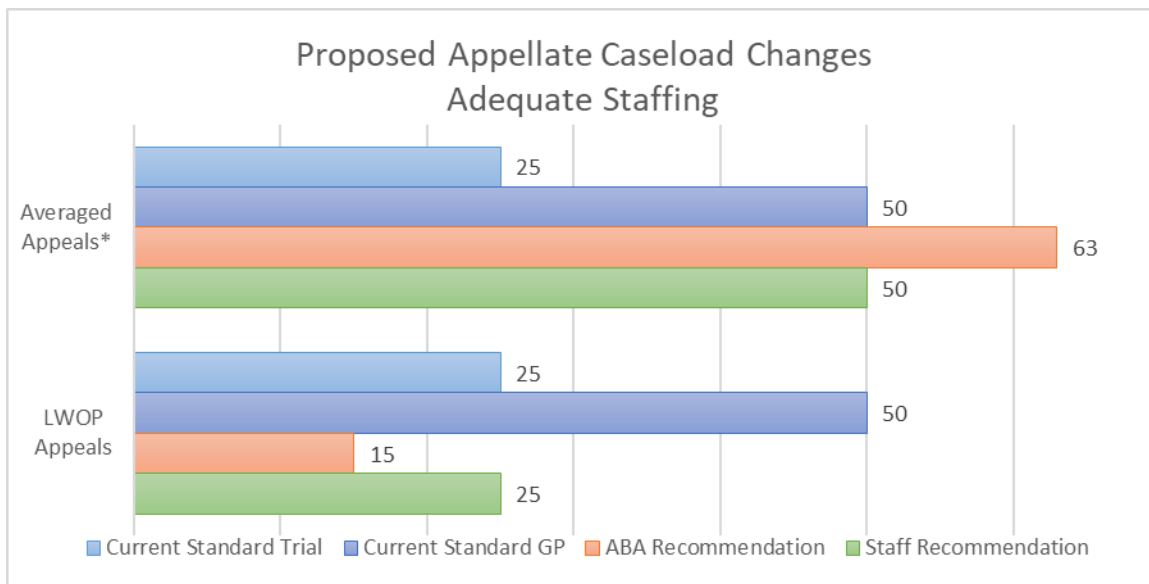


Proposed Juvenile Caseload Changes Adequate Staffing



Proposed Appellate Caseload Changes Inadequate Staffing





Mr. Mason noted that reducing caseloads will impact some counties that have neither the capacity nor the flexibility to reassign cases from attorneys who will no longer be in compliance. This maximum cost will be calculated for each county and these estimated costs will be sent to each county as part of the request for public comment on the proposed changes. He noted the total impact (on non-hourly counties) of the criminal caseload adjustment would be an increase of about \$1.1 million (about \$442,000 to the Commission). He further noted the juvenile caseload adjustment is fairly dramatic, but since the overall number of cases is low, it has a relatively small fiscal impact, with an increased cost of approximately \$56,000 (\$22,000 to the Commission).

Unlike the other caseload standards, the ABA/Crowe study recommended an increase to the workload standard for appeals. Mr. Mason reasoned that due to the prevalence of online research, word processing technology, and e-filing, appellate attorneys can handle more cases. If the ABA/Crowe recommendations for appeals were fully adopted, it would lead to a maximum savings of \$140,000, but Commission staff are recommending levels that fall between the proposed standards and the current standards. Commission staff expect the most comments in this area.

Commission staff recommend submitting these changes to the public for comment with a proposed effective date of January 1, 2023. At a minimum, Commission staff anticipate publishing a special newsletter and reaching out individually to each impacted county with an estimate on how much more FTE the county might need with these changes.

The Chair asked for questions or comments. Ms. Corley inquired what information the public would see, and she requested that very detailed and informative explanations be provided. Mr. Mason explained that both general changes and the specific likely impact on each county would be provided, as well as the Study and the standards, and that the information would be published in a wide variety of places such as the Commission website and newsletter, public defender list serves, press releases, and letters to stakeholders and counties.

Judge Hanlon moved to release the proposed caseload revisions for public comment. Judge Diekhoff seconded the motion. The Chair inquired whether there were any objections. There were none. The motion carried unanimously.

3. Submit for Public Comment: Guideline on Compensation When There is No Comparable Prosecutorial Salary

Mr. Mason stated that Commission staff decided it made sense to change the guideline for compensation at the same time as the caseload standards. Commission staff conducted a study that revealed the average compensation for a public defender in Indiana is almost the same as the Commission's guideline requiring \$60,350 when there is no comparable prosecutorial salary. The guideline requiring the \$60,350 salary seems to be driving salaries generally. In many places, it has been very hard to find attorneys willing to work for this salary, particularly as other state agencies are paying attorneys more than \$80,000. Thus, Commission staff recommended the Commission publish a proposal for public comment to raise contractor compensation when there is no comparable prosecutorial position to \$80,000 for 1.0 FTE and \$40,000 for .5 FTE.

Judge Hanlon stated her belief that this is good idea for recruitment and retention in rural counties. She also thinks the Commission should consider a salary schedule for line public defenders and that this is a good start toward that consideration.

Mr. Casanova inquired whether the compensation change would require counties to increase pay for appellate attorneys by \$20,000. Mr. Mason responded it would not necessarily mean that. For example, Mr. Mason explained that with the increased caseload proposed for appellate attorneys, the FTE could be reduced and attorneys could possibly even handle more cases without increasing their pay. Mr. Mason offered to discuss this situation further with Mr. Casanova.

Judge Hanlon asked how the proposed salary compared to the Attorney General salaries. Mr. Mason responded that Commission staff discussed this with the Attorney General a few years ago, that they have a pay schedule with their own parity issues, but they have had raises. Mr. Mason said he would investigate further and report back to the Commission at the next meeting with an update.

Ms. Corley moved to submit the topic for public comment. Mr. Hensel seconded the motion. There were no objections. The motion carried unanimously.

4. Legislative & Policy Updates

Mr. Cullen reported the Commission received its full base budget request this year. In previous years, the Commission has had to lobby the General Assembly directly for its budget as an independent state agency. This year, however, the Commission worked hard with the State Budget Agency and its budget was included in the Governor's budget. This approach worked very well. Going forward, Commission staff intend to take this approach.

As part of the Commission budget, the Commission received \$2 million each year to utilize for "At Risk Youth and Families." The Commission is circulating a Request for Proposals ("RFP") for this project, as discussed at the last meeting. The RFP is online for the Commission's review. Staff hope it is distributed widely and that innovative and exciting proposals will be received.

This summer, the Interim Study Committee on Courts and Criminal Code is studying two issues of interest to the Commission:

- Assignment of counsel at the initial hearing in criminal cases, the capacity of the public defender system to provide counsel, and the impact of providing counsel on jail overcrowding.
- Multi-year review of current trends with respect to criminal behavior, sentencing, incarceration, and treatment.

Mr. Cullen stated Commission staff have been surveying counties to discover how they conduct first appearances, what counsel (if any) is provided, and for whom. Sen. Glick has asked Commission staff to present their findings and to provide a fiscal impact statement. Mr. Cullen anticipates this may lead to an opportunity for the Commission to provide first appearance funding.

Second, the Committee also considers developments and needs in relation to House Bill 1006 (2014), which may provide a good opportunity for the Commission to (a) update the Committee on which counties are participating in Commission reimbursement and (b) request funding to reimburse counties for misdemeanors.

Finally, Mr. Cullen stated the U.S. Treasury has clarified how state and local governments may use the Coronavirus State and Local Fiscal Recovery Fund, which may include public defenders. Commission staff have learned that some county public defender systems have experienced a significant increase in pending cases because the pandemic has led to delays in case resolutions. Staff are hopeful that the Recovery Fund may allow hiring additional public defenders to deal with this backlog.

Thus, Commission staff are requesting Commission approval to pursue these courses of action and requests for funding. There were no objections.

5. PD Council Request: Update Juvenile Delinquency Qualification Standard

Mr. Mason identified the proposed new wording to update Standard E for juvenile delinquency lawyers who are qualified to represent juveniles exclusively due to their adult criminal experience. The proposed standard would require any lawyer who seeks to handle juvenile delinquency cases based on the attorney's adult criminal experience, as opposed to prior JD experience, to also complete an approved six-hour juvenile delinquency training course provided by the Indiana Public Defender Council. The proposed standard would also allow an attorney to become qualified for juvenile delinquency Levels 1-4 if the attorney has completed a felony JD trial and the approved trial practice course.

Mr. Wieneke thanked the Commission for its support, recognized that juvenile delinquency is a specialized area of criminal law with unique dispositional options, and said that Mr. Mason highlighted the proposed changes well. The training is ready to go, and the video training capacity will be available soon.

Mr. Mason stated Commission staff recommend giving some time for attorneys to plan for this change. Mr. Mason believed, however, that public comment is not necessary since the change is relatively minor. Judge Hanlon observed that since the training videos were ready, it would be easier to implement the changes quickly. She moved to approve the changes, with an effective date of January 1, 2022. Ms. Corley seconded the motion. There were no objections. The motion carried unanimously.

6. Brown County Update

Mr. Mason called the Commission's attention to a letter received from Ruth Johnson, the Brown County Public Defender Chair, which reported on a meeting that occurred on July 19, 2021. Ms. Johnson reported the county has discussed a plan to update their ordinance, their comprehensive plan, and the job descriptions for public defenders. The county is also willing to investigate hiring a chief public defender. Mr. Mason may visit the county to discuss these issues. The county stakeholders all understand the public defender board's role and function. Mr. Mason stated the Commission will continue to monitor the situation there.

Ms. Johnson requested the Commission reimburse the county for its expenses. Mr. Mason recommended reimbursement for Brown County's first quarter reimbursement request. Ms. Corley stated she is very happy to hear so much progress has been made. Sen. Koch moved to reimburse Brown County in full for 1Q2021. Ms. Corley seconded the motion. There were no objections. The motion carried unanimously.

7. Other Matters

Rep. Lauer moved to adjourn the meeting. Mr. Bray seconded the motion. There were no objections. The meeting was adjourned at 3:01 p.m.

INDIANA PUBLIC DEFENDER COMMISSION

September 22, 2021

2:00 PM

**309 W. Washington, 5th Floor, Commission Conference
Room Indianapolis, Indiana 46204**

Members in attendance:

Mark W. Rutherford, Chair (in person)
Mr. Richard Bray (in person)
Ms. Bernice Corley (remote)
Hon. Mary Ellen Diekhoff (remote)
Hon. Kelsey B. Hanlon (remote)
Mr. David J. Hensel (remote)
Sen. Eric Koch (remote)
Hon. Steven P. Meyer (remote)
Sen. Gregory G. Taylor (remote)

Members absent:

Rep. Ragen Hatcher
Rep. Ryan Lauer

Staff in attendance:

Derrick Mason (in person)
Andrew Cullen (in person)
Paula Diaz (in person)
Andrew Falk (remote)
Torrin Liddell (remote)
Jennifer Pinkston (remote)

Audience members (all remotely):

Jim Abbs, Noble County Chief Public
Defender and President, Chief
Public Defender Association
Bruce Andis, Lawrence County Chief
Public Defender
Ray Casanova, Marion County Public
Defender Agency
Gretchen Etling, Vigo County Chief
Public Defender
Jen Harmeyer, Acting Chief, Clark
County
Amy Karozos, State Public Defender
Dolan Monroe, Indiana House of
Representatives
Lisa Moody, Gibson County Chief
Public Defender
Michael Moore, Public Defender
Council
Mickey Weber, Clark County Chief
Public Defender (eff. October 1,
2021)

At two o'clock, Chair Mark Rutherford called the meeting to order. Director and Chief Counsel Derrick Mason called the roll and determined that a quorum was present. Mr. Mason also introduced Commission staff. Audience members introduced themselves.

1. Approval of the July 21, 2021 Meeting Minutes

The Chair inquired whether there were any corrections or changes to the minutes from the July 2021 meeting. There were none. The Chair inquired if there were any objections to approving the minutes. There were no objections. The minutes were approved.

2. Approval of Comprehensive Plan: Crawford County

Mr. Mason stated that he has been speaking with Crawford County Judge Bell about the proposed comprehensive plan. The copy in the Commission materials was provided to Commission staff a few days before the meeting. It does not provide for a public defender board, due to the size of the county. It is primarily a contract system. Public defenders will largely be paid hourly. The county wants to start participation and reimbursements this quarter. Mr. Mason recommends that the comprehensive plan be approved, so long as it is revised to comply with the juvenile education requirements passed at the July meeting.

Ms. Corley expressed her concern that Section G did not include a reference to pay parity with the deputy prosecutor. Mr. Mason explained that this omission is because the county has no deputy prosecutors. Mr. Bray moved to approve the Crawford County Comprehensive Plan, provided it contains the juvenile education requirement language and a reference to pay parity guidelines. Mr. Hensel seconded the motion. There were no questions, concerns, or objections. The motion carried unanimously.

3. Approval of Electronic Meeting Policy

Mr. Mason presented a proposed Electronic Meeting Policy to the Commission. He observed that the Commission is still operating under a state of emergency, as declared by the Governor. As such, the electronic meeting policy would not currently apply. Once the emergency order is lifted, the proposed electronic meeting policy will

be required by statute. Mr. Mason noted that the second sentence (regarding members being able to be seen and heard) under “Voting” needs to be removed from the draft.

The proposed policy requires that one-third of the Commission members must be present in person. Roll call votes must be taken. Commission members must be present in person at a minimum of one meeting each year. Members must also provide notice of electronic attendance to Mr. Mason at least two days before the meeting. While the Commission can impose more requirements than mandated by statute, Commission staff suggest making the requirements no more stringent than necessary. Mr. Cullen further stated that the Public Access counselor approved the Electronic Policy.

Sen. Taylor moved to adopt the Electronic Policy. Judge Hanlon seconded the motion. There was no discussion and no objection. The motion carried unanimously.

4. Financial Status of Public Defense Fund

Mr. Mason provided the current status of the Fund, which is sufficient to pay the 2Q2021 reimbursement requests.

5. Status of County Compliance

A. Clark County Chief PD Salary Compliance

At the Commission meeting on June 16, 2021, the Commission reduced reimbursement to Clark County based on 40 percent of the payment for the Clark County Chief Public Defender, finding that the county was paying its chief less than the minimum salary for chiefs. The Clark County Public Defender Board immediately rectified the salary issue at its July meeting, back-dating the salary to make it effective July 1, 2021. The county requested, since they fixed the issue as soon as they received the 90-day letter, they be reimbursed for the Chief’s salary not only from July forward but also for 2Q2021.

Mr. Mason stated that Commission staff recommended full reimbursement in acknowledgement of the immediate change. Judge Hanlon moved to reimburse Clark County in full for 2Q2021, noting that the Commission should seek to incentivize speedy compliance. Judge Meyer seconded the motion. There were no comments, questions, or objections. The motion carried unanimously.

B. 90-Day Letter Updates

i. Ohio County

Mr. Mason reported that Ohio County also received a 90-day letter. The county has been paying its deputy public defenders about \$12,000 and listing them at .5 FTE. To be in pay parity, the deputies should be listed about .2 FTE – which would lead to caseload compliance problems.

In August, the Ohio County judge responded and indicated that to reach parity or caseload requirement immediately was not financially feasible. The court did not believe the county would be able to obtain appropriations to satisfy the requirements. The court requested permission to finish out the contracts for the calendar year and then amend their comprehensive plan to switch to an hourly rate, paying the public defenders at the required \$90/hour rate. It understood that this option may cost more, but it would allow the county to change its system partway through the year. Mr. Mason agreed that this was likely the best outcome. He further stated that Commission staff would work to update the county's comprehensive plan.

Sen. Taylor asked what assurance the Commission has that the county will be able to increase their budget for the next cycle. Mr. Mason responded that he has spoken to a county commissioner, who represented that they understand they will have to amend their budget.

After additional questions and expressions of concern regarding the issue but not the county's plan, Mr. Bray moved to continue reimbursement as staff recommend, understanding the change to hourly compensation on January 1, 2022. Judge Hanlon seconded the motion. There were no objections. The motion carried unanimously.

ii. Multi-County Attorney Issues

Decatur, Fayette, and Ripley Counties have been using some of the same attorneys, with the result that the attorneys are out of caseload compliance when considering their caseload in all three counties. The first 90-day letter for this issue was sent to these three counties. One attorney, John Dorenbusch, is now in quarterly compliance and should be in yearly compliance by the end of the year. Steps have also

been taken to reduce Spencer Gilland's caseload; it will take multiple quarters, but if the plan is followed, he will also come into compliance. Commission staff will continue monitoring the situation. Mr. Mason recommended continued monitoring for caseload compliance.

The Chair inquired whether the problem is intentional or not paying attention. Mr. Mason responded that particularly in this area, it is difficult to find attorneys and avoid overuse; the noncompliance is unintentional.

Judge Meyer moved to adopt the staff recommendation. Judge Diekhoff seconded the staff recommendation. There were no comments, concerns, or objections. The motion carried unanimously.

iii. Other Compliance issues

Mr. Mason reported that most non-compliant counties only have one attorney who is out of compliance; Elkhart has 2 attorneys out of compliance, but they are planning to hire two attorneys who will start on January 1, 2022, which should resolve their issues. All counties with non-compliant attorneys have a plan to attain compliance. In addition to the multi-county issue already discussed, Blackford and Jay counties also have a multi-county attorney problem; they have a plan to resolve their situation within one to two quarters. Based on the counties' compliance, Mr. Mason recommended reimbursement for all counties. There were no comments, questions, or concerns.

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

Mr. Mason explained that Commission staff have added a column for prior quarter adjustments to the reimbursement request table (see attached spreadsheet). He highlighted adjustments in Elkhart, Green, and Wabash counties. There were no comments, questions, or concerns. Mr. Hensel moved to approve the second quarter 2021 requests for reimbursement. Sen. Taylor seconded the motion. There were no objections. The motion passed unanimously.

7. Local Public Defender Board Appointments

Mr. Cullen informed the Commission that all the appointments this quarter are uncontested. Clinton County and Jefferson County want to reappoint current

members, Eric Spencer and Robert Little, respectively. Elkhart County is recommending a new member to fill a term ending December 2022. Ian Forte, the Elkhart nominee, is a well-respected attorney who does not practice criminal law. Commission staff recommended the Commission appoint these three individuals to their respective county boards.

Sen. Taylor inquired whether the Elkhart County board includes any people of color and stated that the Commission should consider that, particularly in high minority areas. The Chair stated that Commission staff will note that request.

There were no other comments or questions. Ms. Corley moved to appoint the three consensus candidates. Judge Diekhoff seconded the motion. There were no additional questions, concerns, or objections. The motion carried unanimously.

8. Legislative & Policy Updates (Including Statewide Counsel at First Appearance Survey Results)

Mr. Cullen reported that Commission staff have been working with the General Assembly's interim study committees on topics of interest to the Commission. In particular, Sen. Sue Glick is chair of the Interim Study Committee on Corrections and Criminal Code, which has been looking at counsel at first appearance (CAFA). A coalition of groups has been lobbying the committee for additional CAFA funding. Mr. Cullen presented at the first hearing, and Sen. Glick asked the Commission for a proposal. Commission staff conducted a statewide survey and presented their findings to the committee. The proposal would amend the Commission's authorizing statute to allow (but not require) misdemeanor reimbursement at 40% and CAFA reimbursement at 80 percent. Mr. Cullen argues that this does not have a fiscal impact due to its "may" language.

Sen. Taylor asked about an anticipated cost. Mr. Mason responded that Commission staff estimate about \$10 million for misdemeanor reimbursement and for counsel at first appearance. Judge Hanlon inquired about the suggested 80 percent reimbursement for counsel at first appearance. Mr. Cullen said the number was not set in stone. It had been suggested that the rate should be higher than the 40 percent for other reimbursement, and Commission staff decided to double the 40 percent. Mr.

Mason elaborated that having something doubled makes reimbursement easier. Additionally, he recalled a prior conversation at the legislature regarding 75 or 80 percent reimbursement for chief public defender expenses. If the 80 percent for CAFA were enacted, it would provide a number in statute that could be of relevance for the chief reimbursement discussion if that issue were to arise again.

9. Chief Public Defender Request: Retirement Compensation

The Chair stated that Mr. Abbs would be allowed to present first. Mr. Abbs stated that the county audit issue, which he had previously raised, has been worked out between the chiefs and Commission staff. Regarding retirement compensation, Mr. Abbs told the Commission that the Chiefs Association has gone to the legislature requesting retirement compensation parity with prosecutors. He stated his position that the Commission should eliminate the provision in Standard G that states retirement benefits are not included in the pay parity analysis. He further asked the Commission to help the Chiefs Association lobby the General Assembly to provide retirement compensation to chief public defenders.

Judge Meyer inquired how Mr. Abbs expected the change to occur: would the money come from the county, to be reimbursed by the Commission, or would it flow through the State like judges and prosecutors. Mr. Abbs expressed his preference for the latter option.

Mr. Mason referenced the commentary from Commission staff on this topic in the materials, Mr. Abbs' letter, the actuarial letter, and a Commission staff summary. He noted that the pension would be a huge burden on the counties and that it could jeopardize new counties joining the Commission. Removing the Standard G provision regarding retirement benefits could also have a significant impact on counties for other positions as well. Mr. Mason thus recommended caution in moving forward with this proposal. He recommended that a working group be established staffed by the Commission, the Public Defender Council, and the Chiefs Association, that could move toward a solution. The working group could develop a proposal and present it to the Commission.

Commission members offered support for the idea of retirement benefits and the goal of finding and keeping good attorneys to be chiefs, but they expressed concern about how to make it work without imposing significant burdens on the counties. Ms. Corley requested that this issue be taken up at the December meeting. The Chair affirmed that it would be on the agenda.

10. Staff Update: Public Comment and At-Risk Youth & Family Submissions

Mr. Mason informed the Commission that Commission staff have extended the deadline to November 18, 2021, for public comment on the proposed standards changes. Commission staff expect to review the public comments and decide at the December 2021 Commission meeting.

Mr. Mason noted that the Commission has received a small number of proposals for the At Risk Youth and Family funds provided by the legislature. Commission staff hope to present the proposals for consideration at the December meeting.

The Commission has extended an offer of employment to Stephanie Lalani for a fiscal analyst position. Her role will primarily focus on helping counties obtain Title IV-E reimbursement with the Commission. She will start October 4, 2021. Her position will be funded out of the At Risk Youth and Family funds.

Mr. Mason also noted that Commission staff will be conducting its annual training for the counties at the end of October.

11. Other Matters

Judge Meyer moved to adjourn the meeting. Mr. Bray seconded the motion. There were no objections. The meeting was adjourned at 3:23 p.m.

INDIANA PUBLIC DEFENDER COMMISSION

Second Quarter 2021 Requests for Reimbursements in Non-Capital Cases

9/22/2021

County	Non-			Eligible Expenditure	Total		Project Portion 025IVEFPCDAMF21	PDCom Portion	Prior Quarter Adjustment
	Total Expenditure	reimbursable Adjustment	% Adjusted		Payment				
Adams	\$122,706.86	\$27,310.88	22.26%	\$95,395.98	\$ 38,158.39	\$	3,403.13	\$34,755.26	
Allen	\$1,142,795.98	\$75,834.19	6.64%	\$1,066,961.79	\$ 426,784.72	\$	18,140.51	\$408,644.21	
Benton	\$13,244.40	\$1,798.97	13.58%	\$11,445.43	\$ 4,578.17	\$	-	\$4,578.17	
Blackford	\$51,362.25	\$10,385.94	20.22%	\$40,976.31	\$ 16,390.53	\$	315.11	\$16,075.42	
Brown	\$58,452.80	\$18,352.86	31.40%	\$40,099.94	\$ 16,039.98	\$	194.53	\$15,845.45	
Carroll	\$64,022.75	\$20,674.91	32.29%	\$43,347.84	\$ 17,339.14	\$	197.42	\$17,141.72	
Cass	\$176,864.03	\$24,116.98	13.64%	\$152,747.05	\$ 61,098.82	\$	1,108.10	\$59,990.72	
Clark	\$388,009.33	\$18,154.14	4.68%	\$369,855.19	\$ 147,942.08	\$	3,788.47	\$144,153.61	
Clinton	\$72,420.03	\$18,605.73	25.69%	\$53,814.30	\$ 21,525.72	\$	74.47	\$21,451.25	
Decatur	\$106,309.73	\$24,772.82	23.30%	\$81,536.91	\$ 32,614.76	\$	71.40	\$32,543.36	
Dekalb	\$185,763.94	\$18,084.14	9.74%	\$167,679.80	\$ 67,071.92	\$	940.85	\$66,131.07	
Delaware	\$353,587.70	\$907.98	0.26%	\$352,679.72	\$ 141,071.89	\$	6,300.90	\$134,770.99	
Elkhart	\$720,878.43	\$106,147.95	14.72%	\$614,730.48	\$ 242,813.79	\$	3,228.35	\$242,663.84	-\$3,078.40
Fayette	\$86,204.98	\$14,545.64	16.87%	\$71,659.34	\$ 28,663.74	\$	1,416.46	\$27,247.28	
Floyd	\$204,976.55	\$9,899.94	4.83%	\$195,076.61	\$ 78,030.64	\$	4,176.49	\$73,854.15	
Fountain	\$24,530.67	\$7,040.77	28.70%	\$17,489.90	\$ 6,995.96	\$	134.75	\$6,861.21	
Fulton	\$92,627.06	\$24,803.47	26.78%	\$67,823.59	\$ 27,129.43	\$	1,494.14	\$25,635.29	
Gibson	\$263,671.50	\$21,519.44	8.16%	\$242,152.06	\$ 96,860.83	\$	1,989.26	\$94,871.57	
Grant	\$266,469.98	\$6,899.26	2.59%	\$259,570.72	\$ 103,828.29	\$	3,406.96	\$100,421.33	
Greene	\$158,227.74	\$26,021.93	16.45%	\$132,205.81	\$ 55,843.45	\$	1,785.96	\$51,096.36	\$2,961.13
Hancock	\$94,667.87	\$7,316.30	7.73%	\$87,351.57	\$ 34,940.63	\$	2,502.92	\$32,437.71	
Harrison	\$149,277.97	\$15,142.21	10.14%	\$134,135.76	\$ 53,654.31	\$	-	\$53,654.31	
Hendricks	\$447,624.43	\$77,945.76	17.41%	\$369,678.67	\$ 147,871.47	\$	3,658.09	\$144,213.38	
Howard	\$577,395.88	\$61,486.75	10.65%	\$515,909.13	\$ 206,363.65	\$	7,197.74	\$199,165.91	
Jackson	\$184,547.61	\$7,359.71	3.99%	\$177,187.90	\$ 70,875.16	\$	3,104.29	\$67,770.87	
Jasper	\$99,149.93	\$43,318.49	43.69%	\$55,831.44	\$ 22,332.58	\$	359.01	\$21,973.57	
Jay	\$117,546.06	\$17,404.76	14.81%	\$100,141.30	\$ 40,056.52	\$	1,576.53	\$38,479.99	
Jefferson	\$205,963.02	\$25,203.26	12.24%	\$180,759.76	\$ 72,303.91	\$	1,468.89	\$70,835.02	
Jennings	\$131,352.14	\$17,649.43	13.44%	\$113,702.71	\$ 45,481.08	\$	844.23	\$44,636.85	
Knox	\$223,732.21	\$47,468.30	21.22%	\$176,263.91	\$ 70,505.56	\$	1,929.08	\$68,576.48	
Kosciusko	\$264,883.24	\$89,868.92	33.93%	\$175,014.32	\$ 70,005.73	\$	1,592.47	\$68,413.26	
LaGrange	\$85,861.71	\$14,023.03	16.33%	\$71,838.68	\$ 28,735.47	\$	1,290.30	\$27,445.17	
Lake	\$1,342,596.39	\$7,326.45	0.55%	\$1,335,269.94	\$ 534,107.98	\$		\$534,107.98	
LaPorte	\$273,704.56	\$24,241.65	8.86%	\$249,462.91	\$ 99,785.16	\$	2,790.67	\$96,994.49	
Lawrence	\$208,802.93	\$36,561.71	17.51%	\$172,241.22	\$ 68,896.49	\$	3,012.56	\$65,883.93	
Madison	\$534,214.54	\$14,172.14	2.65%	\$520,042.40	\$ 208,016.96	\$	7,825.94	\$200,191.02	
Marion	\$648,160.29	\$581,684.34	8.97%	\$5,901,475.95	\$ 2,360,590.38	\$	84,296.04	\$2,276,294.34	
Martin	\$58,565.71	\$8,256.55	14.10%	\$50,309.16	\$ 20,123.67	\$	1,196.94	\$18,926.73	
Miami	\$160,961.63	\$23,076.96	14.34%	\$137,884.67	\$ 55,153.87	\$	730.64	\$54,423.23	
Monroe	\$574,706.38	\$76,479.83	13.31%	\$498,226.55	\$ 199,290.62	\$	9,195.08	\$190,095.54	
Noble	\$247,512.02	\$41,180.05	16.64%	\$206,331.97	\$ 82,532.79	\$	2,056.52	\$80,476.27	
Ohio	\$22,464.74	\$4,559.37	20.30%	\$17,905.37	\$ 7,162.15	\$	-	\$7,162.15	
Orange	\$200,427.69	\$41,088.80	20.50%	\$159,338.89	\$ 63,735.56	\$	3,018.74	\$60,716.82	
Owen	\$98,361.03	\$16,410.24	16.68%	\$81,950.79	\$ 32,780.32	\$	1,728.07	\$31,052.25	
Parke	\$43,251.52	\$9,248.99	21.38%	\$34,002.53	\$ 13,601.01	\$	168.40	\$13,432.61	
Perry	\$71,721.64	\$9,102.59	12.69%	\$62,619.05	\$ 25,047.62	\$	3,052.37	\$21,995.25	
Pike	\$50,698.60	\$1,911.07	3.77%	\$48,787.53	\$ 19,515.01	\$	1,740.44	\$17,774.57	
Pulaski	\$102,198.36	\$32,189.03	31.50%	\$70,009.33	\$ 28,003.73	\$	1,124.59	\$26,879.14	
Ripley	\$54,804.40	\$5,467.74	9.98%	\$49,336.66	\$ 19,734.66	\$	584.20	\$19,150.46	
Rush	\$118,969.51	\$11,999.64	10.09%	\$106,969.87	\$ 42,787.95	\$	1,909.87	\$40,878.08	
Scott	\$135,069.22	\$14,377.86	10.64%	\$120,691.36	\$ 48,276.54	\$	2,580.16	\$45,696.38	
Shelby	\$182,397.39	\$25,449.99	13.95%	\$156,947.40	\$ 62,778.96	\$	1,625.23	\$61,153.73	
Spencer	\$109,708.67	\$14,048.34	12.81%	\$95,660.33	\$ 38,264.13	\$	3,405.15	\$34,858.98	
Steuben	\$104,873.11	\$33,744.96	32.18%	\$71,128.15	\$ 28,451.26	\$	1,453.05	\$26,998.21	
StJoseph	\$638,086.54	\$63,067.17	9.88%	\$575,019.37	\$ 230,007.75	\$	9,082.62	\$220,925.13	
Sullivan	\$86,647.79	\$25,076.40	28.94%	\$61,571.39	\$ 24,628.56	\$	1,405.23	\$23,223.33	
Switzerland	\$60,524.23	\$12,966.45	21.42%	\$47,557.78	\$ 19,023.11	\$	328.64	\$18,694.47	
Tippecanoe	\$1,131,867.57	\$208,945.27	18.46%	\$922,922.30	\$ 369,168.92	\$	11,571.19	\$357,597.73	
Union	\$21,015.00	\$4,036.15	19.21%	\$16,978.85	\$ 6,791.54	\$	-	\$6,791.54	
Vanderburgh	\$825,735.33	\$50,596.31	6.13%	\$775,139.02	\$ 310,055.61	\$	11,674.69	\$298,380.92	
Vermillion	\$62,389.92	\$19,574.18	31.37%	\$42,815.74	\$ 17,126.30	\$	486.09	\$16,640.21	
Vigo	\$881,517.60	\$143,500.85	16.28%	\$738,016.75	\$ 295,206.70	\$	10,977.07	\$284,229.63	
Wabash	\$143,432.41	\$21,900.12	15.27%	\$121,532.29	\$ 48,455.96	\$	2,027.99	\$46,584.93	-\$156.96
Warren	\$21,415.70	\$3,901.00	18.22%	\$17,514.70	\$ 7,005.88	\$	476.08	\$6,529.80	
Warrick	\$138,880.28	\$28,587.59	20.58%	\$110,292.69	\$ 44,117.08	\$	198.21	\$43,918.87	
Washington	\$185,484.09	\$20,844.45	11.24%	\$164,639.64	\$ 65,855.86	\$	1,525.77	\$64,330.09	
Totals	\$22,511,295.57	\$2,535,639.10		\$19,975,656.47	\$ 7,989,988.41				-\$274.23
*Potential Reduction for Chief Benefits & Salary in Clark:			\$	16,679.56	\$ 7,973,308.85				

INDIANA PUBLIC DEFENDER COMMISSION

December 15, 2021

2:00 PM

**309 W. Washington, 5th Floor, Commission Conference Room
Indianapolis, Indiana 46204**

Members in attendance:

Mark W. Rutherford, Chair (in person)
Ms. Bernice Corley (remote)
Hon. Mary Ellen Diekhoff (remote)
Hon. Kelsey B. Hanlon (remote)
Mr. David J. Hensel (remote)
Sen. Eric Koch (remote)
Rep. Ryan Lauer (remote)

Members absent:

Mr. Richard Bray
Rep. Ragen Hatcher
Hon. Steven P. Meyer
Sen. Gregory G. Taylor

Staff in attendance:

Derrick Mason (in person)
Andrew Cullen (in person)
Paula Diaz (remote)
Andrew Falk (remote)
Stephanie Lalani (remote)
Torrin Liddell (remote)
Jennifer Pinkston (remote)
Jennifer Shircliff (remote)

Audience members (all remotely):

Jim Abbs, Noble County Chief Public
Defender and President, Chiefs
Association
Ray Casanova, Marion County Public
Defender Agency
Mark Clark, Washington County Chief
Public Defender
Gretchen Etling, Vigo County Chief
Public Defender
Amy Karazos, State Public Defender
Andrea Marsh, Direct Representation
Program, Child Advocates
Lisa Moody, Gibson County Chief
Public Defender
Andrew Vandenbosch, Howard
County Chief Public Defender

At two o'clock, Chair Mark Rutherford called the meeting to order, asked audience members to introduce themselves, and ascertained that a quorum of the Commission was present. To insure a quorum was maintained for certain agenda items, the Chair elected to take certain items out of agenda order, starting with agenda item 4.

4. Financial Status of Public Defense Fund

Commission Director and Chief Counsel, Derrick Mason, provided the status of the Fund, which is sufficient to pay the 3Q2021 reimbursement requests.

5. Status of County Compliance

Mr. Mason stated that Commission staff are continuing to work with attorneys working for multiple counties. It will take several quarters to enable all the counties to be in full compliance, but progress is being made. Commission staff will update the Commission next quarter.

Only four counties currently have attorneys who are out of substantial compliance: Jackson County's attorney is out of substantial compliance at the same level as last quarter, but that attorney is quarterly compliant. It will likely require a full four quarters before that attorney is back in substantial compliance.

In Scott County, it is a different attorney than last quarter who is out of compliance; this quarter, it is their assistant chief who is out of compliance. The county expects to be back in compliance in the upcoming quarter.

Warrick County has received permission to hire a new attorney January 1, 2022, which they expect will help resolve their compliance issues. Additionally, as this was their first year in the Commission, they are still learning and have perhaps not effectively assigned cases. With more experience assigning cases, they hope to address caseload compliance issues.

Washington is out of compliance again this quarter. Commission staff expect that the Commission will approve an amended comprehensive plan, which provides for a salary system, for Washington County at the next meeting. The county and Commission staff expect this should resolve the compliance issue.

Because all the counties with compliance issues have plans to become caseload compliant, Mr. Mason does not recommend any 90-day letters at this time. The Chair inquired whether the four counties seem to be making progress, and Mr. Mason confirmed that they are and that he was not worried about any of them. There were no further questions or concerns.

6. Requests for Reimbursement:

a. 50% Reimbursement in Death Penalty Cases

Marion County requested reimbursement for the Dorsey (capital) case. Part of the request was timely and part was untimely; apparently both attorneys working on the case are in-house counsel, which did not trigger the county's normal capital request process. That system has now been resolved and it should not be an issue going forward. Mr. Mason recommended reimbursement to Marion County in the full amount of \$8,398.69, as requested.

Ms. Corley moved to make the reimbursement. Judge Hanlon seconded the motion. There were no objections. The motion carried.

b. 40% Reimbursement in Non-Capital Cases

Mr. Mason noted there are no 90-day letters this quarter. Last quarter the Commission approved reimbursement for Ohio County despite the county's non-compliance, and since that time the Commission has received their amended comprehensive plan with its hourly component, which will be discussed today. He recognized two small desk-audit changes: a ten-dollar reduction for Jasper County and a \$91.60 reduction for Sullivan County. Mr. Mason thus recommended full reimbursement in the amount of \$7,672,686.17 (see Table on next page).

There were no comments, questions, or concerns. Mr. Hensel moved to make the reimbursement as requested. Judge Hanlon seconded the motion. There were no objections. The motion was approved.

Having concluded these matters, the Chair returned to the proposed agenda items, starting with the first item and moving forward.

INDIANA PUBLIC DEFENDER COMMISSION

Third Quarter 2021 Requests for Reimbursements in Non-Capital Cases

12/15/2021

County	Non-reimbursable			Eligible Expenditure	40% Reimbursed	Adjustments	Total Payment
	Total Expenditure	Adjustment	% Adjusted				
Adams	\$110,307.57	\$17,904.62	16.23%	\$92,402.95	\$36,961.18		\$36,961.18
Allen	\$1,273,115.89	\$87,056.21	6.84%	\$1,186,059.68	\$474,423.87		\$474,423.87
Benton	\$7,539.55	\$1,433.25	19.01%	\$6,106.30	\$2,442.52		\$2,442.52
Blackford	\$40,384.00	\$11,316.59	28.02%	\$29,067.41	\$11,626.96		\$11,626.96
Brown	\$59,611.78	\$9,098.38	15.26%	\$50,513.40	\$20,205.36		\$20,205.36
Carroll	\$59,152.80	\$19,398.09	32.79%	\$39,754.71	\$15,901.88		\$15,901.88
Cass	\$180,617.48	\$26,485.12	14.66%	\$154,132.36	\$61,652.94		\$61,652.94
Clark	\$394,286.78	\$23,592.30	5.98%	\$370,694.48	\$148,277.79		\$148,277.79
Clinton	\$90,115.96	\$19,361.53	21.49%	\$70,754.43	\$28,301.77		\$28,301.77
Crawford	\$80,924.84	\$14,970.43	18.50%	\$65,954.41	\$26,381.76		\$26,381.76
Decatur	\$96,542.91	\$23,999.23	24.86%	\$72,543.68	\$29,017.47		\$29,017.47
Dekalb	\$220,662.19	\$21,604.23	9.79%	\$199,057.96	\$79,623.18		\$79,623.18
Delaware	\$339,187.75	\$2,045.57	0.60%	\$337,142.18	\$134,856.87		\$134,856.87
Elkhart	\$859,406.86	\$115,671.89	13.46%	\$743,734.97	\$297,493.99		\$297,493.99
Fayette	\$89,987.46	\$12,208.12	13.57%	\$77,779.34	\$31,111.74		\$31,111.74
Floyd	\$224,013.65	\$11,314.99	5.05%	\$212,698.66	\$85,079.47		\$85,079.47
Fountain	\$34,959.18	\$8,011.82	22.92%	\$26,947.36	\$10,778.94		\$10,778.94
Fulton	\$73,452.16	\$13,903.90	18.93%	\$59,548.26	\$23,819.30		\$23,819.30
Gibson	\$198,215.33	\$24,657.10	12.44%	\$173,558.23	\$69,423.29		\$69,423.29
Grant	\$247,151.82	\$11,343.61	4.59%	\$235,808.21	\$94,323.29		\$94,323.29
Greene	\$174,826.96	\$24,651.23	14.10%	\$150,175.73	\$60,070.29		\$60,070.29
Hancock	\$155,432.03	\$12,396.72	7.98%	\$143,035.31	\$57,214.13		\$57,214.13
Harrison	\$162,089.61	\$17,922.78	11.06%	\$144,166.83	\$57,666.73		\$57,666.73
Hendricks	\$470,685.65	\$76,430.43	16.24%	\$394,255.22	\$157,702.09		\$157,702.09
Howard	\$472,017.72	\$48,813.85	10.34%	\$423,203.87	\$169,281.55		\$169,281.55
Jackson	\$216,157.72	\$9,449.06	4.37%	\$206,708.66	\$82,683.46		\$82,683.46
Jasper	\$90,416.11	\$32,200.78	35.61%	\$58,215.33	\$23,286.13	-\$10.00	\$23,276.13
Jay	\$139,612.82	\$24,514.77	17.56%	\$115,098.05	\$46,039.22		\$46,039.22
Jefferson	\$196,021.30	\$24,075.54	12.28%	\$171,945.76	\$68,778.31		\$68,778.31
Jennings	\$130,707.74	\$14,621.70	11.19%	\$116,086.04	\$46,434.42		\$46,434.42
Knox	\$221,445.02	\$32,255.46	14.57%	\$189,189.56	\$75,675.82		\$75,675.82
Kosciusko	\$281,079.74	\$86,077.08	30.62%	\$195,002.66	\$78,001.06		\$78,001.06
LaGrange	\$69,811.70	\$11,049.86	15.83%	\$58,761.84	\$23,504.74		\$23,504.74
Lake	\$1,434,162.55	\$11,053.18	0.77%	\$1,423,109.37	\$569,243.75		\$569,243.75
LaPorte	\$266,176.39	\$52,762.30	19.82%	\$213,414.09	\$85,365.64		\$85,365.64
Lawrence	\$344,507.68	\$52,229.82	15.16%	\$292,277.86	\$116,911.15		\$116,911.15
Madison	\$511,239.10	\$10,505.39	2.05%	\$500,733.71	\$200,293.48		\$200,293.48
Marion	\$5,375,159.80	\$467,505.44	8.70%	\$4,907,654.36	\$1,963,061.74		\$1,963,061.74
Martin	\$60,281.60	\$12,693.43	21.06%	\$47,588.17	\$19,035.27		\$19,035.27
Miami	\$199,435.54	\$26,923.12	13.50%	\$172,512.42	\$69,004.97		\$69,004.97
Monroe	\$618,308.23	\$87,115.96	14.09%	\$531,192.27	\$212,476.91		\$212,476.91
Noble	\$277,345.88	\$50,580.04	18.24%	\$226,765.84	\$90,706.34		\$90,706.34
Ohio	\$23,278.95	\$4,127.50	17.73%	\$19,151.45	\$7,660.58		\$7,660.58
Orange	\$95,047.22	\$12,902.72	13.58%	\$82,144.50	\$32,857.80		\$32,857.80
Owen	\$73,052.69	\$12,409.24	16.99%	\$60,643.45	\$24,257.38		\$24,257.38
Parke	\$46,077.66	\$9,360.39	20.31%	\$36,717.27	\$14,686.91		\$14,686.91
Perry	\$64,195.93	\$6,449.05	10.05%	\$57,746.88	\$23,098.75		\$23,098.75
Pike	\$38,245.14	\$3,527.04	9.22%	\$34,718.10	\$13,887.24		\$13,887.24
Pulaski	\$89,817.64	\$18,295.27	20.37%	\$71,522.37	\$28,608.95		\$28,608.95
Ripley	\$86,607.69	\$8,701.23	10.05%	\$77,906.46	\$31,162.58		\$31,162.58
Rush	\$106,039.69	\$10,178.09	9.60%	\$95,861.60	\$38,344.64		\$38,344.64
Scott	\$143,108.70	\$19,762.61	13.81%	\$123,346.09	\$49,338.44		\$49,338.44
Shelby	\$181,653.17	\$26,189.24	14.42%	\$155,463.93	\$62,185.57		\$62,185.57
Spencer	\$109,568.39	\$17,422.82	15.90%	\$92,145.57	\$36,858.23		\$36,858.23
Stauben	\$126,300.52	\$46,863.90	37.11%	\$79,436.62	\$31,774.65		\$31,774.65
StJoseph	\$604,230.14	\$57,982.61	9.60%	\$546,247.53	\$218,499.01		\$218,499.01
Sullivan	\$109,495.86	\$16,049.96	14.66%	\$93,445.90	\$37,378.36	-\$91.60	\$37,286.76
Switzerland	\$53,949.91	\$3,195.31	5.92%	\$50,754.60	\$20,301.84		\$20,301.84
Tippecanoe	\$999,134.20	\$134,098.20	13.42%	\$865,036.00	\$346,014.40		\$346,014.40
Union	\$29,571.95	\$1,830.00	6.19%	\$27,741.95	\$11,096.78		\$11,096.78
Vanderburgh	\$709,817.68	\$42,196.86	5.94%	\$667,620.82	\$267,048.33		\$267,048.33
Vermillion	\$49,184.23	\$8,447.48	17.18%	\$40,736.75	\$16,294.70		\$16,294.70
Vigo	\$757,218.42	\$130,736.58	17.27%	\$626,481.84	\$250,592.74		\$250,592.74
Wabash	\$107,175.49	\$11,764.10	10.98%	\$95,411.39	\$38,164.56		\$38,164.56
Warren	\$10,973.00	\$3,352.50	30.55%	\$7,620.50	\$3,048.20		\$3,048.20
Warrick	\$164,473.30	\$11,410.67	6.94%	\$153,062.63	\$61,225.05		\$61,225.05
Washington	\$153,058.55	\$17,405.28	11.37%	\$135,653.27	\$54,261.31		\$54,261.31
Total	\$21,477,832.97	\$2,295,863.57	14.62%	\$19,181,969.40	\$7,672,787.77	-\$101.60	\$7,672,686.17

1. Approval of Minutes of the September 22, 2021, Meeting

The Chair inquired whether there were any corrections or changes to the meeting minutes from September 22, 2021. There were none. Mr. Hensel moved to approve the minutes. Sen. Koch seconded the motion. The motion carried.

2. Approval of Amended Comprehensive Plan: Jefferson County

Mr. Mason introduced the Jefferson County Amended Comprehensive Plan, noting that its primary change is from a full contract system to one in which, in addition to a contract system, they also have a part-time chief public defender. He recommended that the Commission approve the plan, assuming the county also updates the juvenile education requirement for attorneys, as the Commission's Standards were amended to include at the last quarterly meeting. Judge Hanlon moved to approve the Amended Comprehensive Plan as recommended. Judge Diekhoff seconded the motion. There were no concerns, questions, comments, or objections. The motion carried and the plan was approved.

3. Approval of Amended Comprehensive Plan: Ohio County

Mr. Mason noted that Ohio County has no public defender board. As previously discussed, both the county and Commission Staff believed it would be helpful for the county to transition from a contract system, which was severely underfunded, to a complete hourly system. Commission Staff Attorney Andrew Falk worked with the county to draft and develop the amended comprehensive plan, which will take effect January 1, 2022. Mr. Mason requested that the Amended Comprehensive Plan be approved as submitted to the Commission. There were no comments, questions, or concerns. Mr. Hensel moved to approve the Amended Comprehensive Plan. Judge Diekhoff seconded the motion. There were no comments or objections. The motion carried and the plan was approved.

The Commission, having already covered agenda items 4 through 6, moved on to agenda item number 7.

7. Proposals for Caseload Standard Revision & Guideline on Compensation When There is No Comparable Prosecutorial Salary

Mr. Mason reminded the Commission that at the June 2021 meeting, Commission staff recommended changes to (a) the Guideline for Standard G, regarding how much a public defender should be paid when there is no comparable prosecutorial salary, and (b) to caseload standards, particularly major felonies, appeals, and juvenile cases. In the meeting materials, Commission staff provided the same materials provided to the Commission in June for their review. Also in the materials was new information regarding an estimate of any new attorneys that Commission staff believe would need to be added by any county. Fifteen counties would need to hire between one and three attorneys. Commission staff received many comments on the proposed changes, and the comments were generally favorable toward the proposed changes.

The Chiefs Association requested that the changes be implemented in 2025. One other person requested 2024. Commission staff proposed making the changes effective in 2023 but allowing the counties additional time to come into compliance with all the changes, such as was allowed with the CHINS standards.

Ms. Corley asked whether the appeals committee had discussed the LWOP standard. Mr. Mason said it was not really discussed, as LWOP cases are uncommon. The ABA recommendation of 63 cases was a much bigger concern.

Mr. Abbs stated the Chiefs Association is generally favorable toward the changes but wants the changes to take effect in 2025, with the concern that if the changes took effect too soon, some counties would pull out of the Commission. He also requested absolute clarity regarding when the changes would take effect. Judge Hanlon stated that she preferred a later effective date that might also include other changes being contemplated.

There was significant conversation about adequate staffing, but the consensus was that it is largely county specific, where some counties need more staff and others less. As a result, the issue will require significant study and careful consideration to achieve any meaningful and helpful changes to the standard.

Ms. Corley moved to adopt the proposed caseload standard, to take effect on January 1, 2024, as stated in the materials except that the appellate LWOP standard would be 15 cases for adequately and inadequately staffed attorneys. Judge Hanlon seconded the motion. The Chair asked if there was any discussion. Mr. Hensel asked if it would be an unforgiving deadline. Ms. Corley and Judge Hanlon both stated they believed it should be a hard line. There was no further discussion or questions. There were no objections. The motion carried and the caseload standards (outlined in the chart below) were approved.

Appeals:

	CURRENT		PROPOSED	
	Inadequate	Adequate	Inadequate	Adequate
Trial Appeal	20	25		
Plea Appeal	40	50		
LWOP Appeal			15	15
Appeal			40	50

All Other Case Types:

	CURRENT		PROPOSED	
	Inadequate	Adequate	Inadequate	Adequate
MR	100	120	15	20
L1/L2	100	120	50	65
L3/L4	100	120	80	100
L5	100	120	100	120
L6	150	200	150	200
L6 Exclusive Atty	225	270	150	200
CM	300	400	300	400
JD MR	200	250	15	20
JD Waiver	200	250	50	65
JD L1-4	200	250	100	120
JD L5*	200	250	220	275
JD L6*	250	300	220	275
JD CM**	300	400	300	375
JM**	400	500	300	375
JD Prob	400	500	400	500
JS	400	500	400	500
JC	120	150	120	150
JT	120	150	120	150
Adult. Prob. Viol.	300	400	300	400
Non-Reimb. Other	300	400	300	400
*JD L5/L6 were grouped together, but currently have different standards				
**JD CM/JM were grouped together, but currently have different standards				

Regarding the Guideline for Standard G, which governs the salary and contract amounts for public defenders when there is no comparable deputy prosecutor, Mr. Mason noted that it should impact only a small percentage of counties. Many counties nevertheless are using the existing \$60,350/\$30,175 guideline despite it not being applicable to them and multiple counties are implementing the proposed \$80,000/\$40,000 numbers already, perhaps because of the difficulty of obtaining and retaining counsel.

Judge Hanlon moved to amend the Guideline for Standard G to require a minimum salary or contract amount of \$80,000 for full time public defenders, and \$40,000 for half-time public defenders, when there is no comparable deputy prosecutor on which to base compensation, effective January 1, 2024. Judge Diekhoff seconded the motion. There were no objections. The motion carried and the guideline was amended.

8. At-Risk Youth and Family Update & New Proposals

Mr. Mason provided the Commission with several updates regarding the At-Risk Youth and Family projects.

a. Title IV-E funding

Stephanie Lalani has been hired and begun working with the counties to help them receive Title IV-E funding. Commission staff have finalized an amended MOU with the Department of Child Services and have been working on grant contracts that counties will sign, allowing them to receive federal funds to reimburse them for the 60% of costs not reimbursed by the Commission. Commission staff expect to begin this reimbursement for Marion County, which is fully on board, for the fourth quarter of 2021. Commission staff are scheduling meetings with both Commission and non-Commission counties for January. Staff expect that Owen and Monroe counties will begin receiving Title IV funding after the March 2022 meeting. Non-Commission counties may complete the same forms as Commission counties to qualify for the funding.

b. System Navigator pilot program

Monroe County is the first county to implement the system navigator program. The program is heavily data driven, and the work is beginning with a control group and an experimental group. Mr. Mason and Dr. Torrin Liddell are working closely with the program. Vigo County is implementing a somewhat similar social worker program. Like in Monroe County, data and outcomes are being measured to determine effectiveness. Commission staff are hoping to find one or two more counties to begin similar programs.

c. Prevention pilot project

Commission staff have talked with DCS and Strengthening Indiana Families (SIF) about a partnership involving public defenders, social workers, and legal aid attorneys who could support parents at risk of DCS involvement. SIF decided it was too far into its current federal grant to participate in this program, plus it did not want a public defense component to its work. Commission staff are still looking for a county partner to do something similar, but have begun considering shifting directions toward hiring an attorney who could represent parents in three areas where legal representation is needed in CHINS and TPR cases: (1) pre-DCS involvement, to prevent the necessity for DCS intervention, (2) pre-petition, where DCS refers someone to prevent removal or prevent from filing CHINS, and (3) post-petition where the public defender refers their client to the attorney to handle a case to change custody and close the case, which would affect public defender caseload numbers.

Commission staff thus requested that the Commission approve the attorney representation model while Commission staff attempt to find a suitable partner for the pre-approved model. Ms. Corley moved to approve the staff recommendation. Mr. Hensel seconded the motion. There were no objections. The motion carried and the recommendation was approved.

d. Marion County “Early Intervention Team”

Mr. Mason reported that Marion County has proposed a juvenile delinquency pilot program that they are calling “Early Intervention Teams.” The teams consist of an attorney and a social worker who will represent Marion County Public Defender

Agency juvenile delinquency clients prior to the initial and detention hearing. The goal is to reduce the number of detentions and filings and find better placements and shorter outcomes. Dr. Liddell has been working on refining the data collection component. The budget is \$247,345 through June 30, 2023, but it may be extended if funds were available and if the data collected showed positive effects.

Staff recommended that the juvenile delinquency pilot be approved. Judge Diekhoff moved to approve the pilot. Judge Hanlon seconded the motion. There were no objections. The motion carried and the recommendation was approved.

e. Child Advocates – counsel for children

Mr. Mason highlighted aspects of the Child Advocates proposal, noting that it would provide older children, such as those 12 and older, with counsel. Child Advocates now has a grant-funded pilot in Marion County and would like to expand state-wide with at-risk youth and family funds. The proposed program would include two additional attorneys and a social worker and contract with the existing program for \$325,000 per year.

Mr. Mason personally supports the program as an attorney who has done GAL work, but he has concerns with it being a Commission-level pilot project: the Supreme Court has expressed concerns about the program, CASA has concerns that it is going to be replaced, some judges have raised cautions, and some legislators have said this is not what the legislation was intended to fund. Additionally, this is not the type of system that the Commission has worked on. Thus, staff do not recommend adoption of the program.

There were no motions regarding the adoption of the program, and no further action on it was taken.

9. Local Public Defender Board Appointments

Mr. Andrew Cullen reported that there are no contested appointments this month; all the appointments are unopposed: Ed Selvidge in Carroll County, Robert Slaton in Knox County, Peggy Iddings in LaGrange County, and Steve Bennett in Perry County. Judge Hanlon moved to adopt the staff recommendations for the local

public defender boards. Mr. Hensel seconded the motion. There were no objections. The motion carried and the staff recommendations were adopted.

10. Legislative & Policy Updates (Including Chief PD Retirement Request)

a. Proposed legislation

Mr. Cullen reminded the Commission that at the September meeting, the Commission approved a legislative approach requesting that reimbursement for misdemeanor cases (at 40%) and counsel at first appearance (at 80%) be authorized but not required. Mr. Cullen presented this request to the Interim Study Committee on Corrections and Criminal Code. At that hearing, Ms. Corley also requested that the Committee endorse a third proposal authorizing but not requiring the Commission to reimburse multi-county, regionalized public defense programs at a higher rate than the current 40%. Senator Sue Glick has agreed to authorize such legislation covering all three requests, and the bill is currently being drafted. Commission staff will argue that the proposed legislation has no fiscal impact since all spending will be discretionary.

Mr. Cullen asked the Commission to approve the addition of the multi-county public defense program reimbursement to the Commission's 2022 Legislative Agenda and authorize the legislation as the Commission's only and top legislative priority for 2022.

Ms. Corley moved to adopt the staff recommendation. Judge Hanlon seconded the motion. There were no objections. Rep. Lauer abstained. The motion carried and the recommendation was approved.

b. Chief Public Defender retirement request

Mr. Cullen noted that the Chief's Association, in conjunction with the Public Defender Council, are exploring options to improve the retirement packaged for Chief PDs. Mr. Abbs sent a letter regarding this matter, which was included in the materials. The Commission staff did not recommend any action on the proposal until it could review a final draft of the proposed legislation.

Mr. Abbs made a statement to the Commission, requesting the Commission's support.

Ms. Corley asked whether it would be appropriate for the Commission to support the idea? Mr. Cullen responded that Commission staff are hesitant to endorse the proposal in the context of bigger priorities such as reimbursement for misdemeanors and multi-county districts. He thinks it could jeopardize other issues. Any discussion of PD Chief retirement should be discussed in the larger context of Commission priorities, he said.

Judge Hanlon moved to adopt the Commission staff recommendation, in essence tabling any action on the PD Chief retirement. Mr. Hensel seconded the motion. Rep. Lauer inquired whether the Chiefs want to create a new retirement fund or to include them in a general public fund. Mr. Abbs responded that since no other fund wanted the Chiefs to join them, it would create a new account.

The Chair read the staff recommendation, which Judge Hanlon moved to adopt: "Authorize staff to continue to discuss this issue with the Chiefs Association and IPDC and authorize Commission staff to assist and to engage in discussions regarding the bill draft and legislative strategy. Any final endorsements and prioritizations will be considered in 2022 once a proposal is final and presented to the Commission." Rep. Lauer abstained. There were no objections. The motion carried and the recommendation was approved.

11. Approval of Trial Practice Courses: Marion County In-House & Hawaii Prosecutor

Mr. Mason stated that Marion County has submitted a request to have an in-house trial practice course approved by the Commission. Marion County is requesting that their training be approved as a trial practice course in satisfaction of Standard E. Commission staff recommend approval.

Mr. Mason further reported that an attorney, Mr. Erik Olsen, requested that a Hawaii trial advocacy course be considered a trial practice course, also to satisfy Standard E. Mr. Mason recommended that it be approved on a one-time basis.

Judge Diekhoff moved to approve both courses. Mr. Hensel seconded the motion. There were no objections. The motion carried and the approval was given.

12. Staff update

Mr. Mason reported that Staff Attorney Jennifer Shircliff has been conducting local board training around the state, and she has completed training in most of the counties. A few counties, however, have not completed training and have not been responsive in either scheduling training or notifying the Commission when their boards are meeting. If this is not rectified, Commission staff anticipate requesting 90-day letters for these counties at the March meeting.

The Chair reported that the Governor has reappointed Mr. Hensel and the Chair to additional four-year terms, and both have agreed to serve those terms.

Mr. Mason introduced Stephanie Lalani, who has been hired to help launch the Title IV-E program and serve as the primary contact with the counties.

13. 2022 Commission Meeting Dates

Commission staff recommended the following proposed meeting dates for 2022:

- Quarter 4: March 23, 2022
- Quarter 1: June 15, 2022
- Quarter 2: September 21, 2022
- Quarter 3: December 14, 2022

Mr. Hensel moved to approve these dates. Judge Diekhoff seconded the motion. There were no objections. The motion carried and the dates were approved.

14. Other Matters

It was moved and seconded to adjourn the meeting. There were no objections. The meeting was adjourned.