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Public Defender Commission

309 W Washington Street Suite 501 • Indianapolis, IN 46204

www.in.gov/publicdefender • ph 317-233-6908

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Commission Calls for Public Comments on Compensation Standard

The Compensation Subcommittee of the Public Defender Commission was formed in 2017 to evaluate standards related to compensation of public defenders. The subcommittee has been specifically exploring the issue of inequities for contractual public defenders responsible for overhead expenses. The subcommittee is also examining whether the definition of “compensation” in the current standards should be revised. The full Commission considered the work of the subcommittee and has referred the issue to public comment.

The subcommittee has also discussed the incongruity of allowing part-time public defenders to handle the same 100% full-time equivalent (FTE) caseload as full-time salaried public defenders and the challenges posed by calculating salary and benefit parity for public defenders, especially those who are above “part time” or 50% FTE.

North Carolina and Michigan have recently concluded overhead studies that indicate overhead could range from \$58,000 to over \$90,000 per public defender. The Commission has recently launched its own survey to determine the realities of overhead for Indiana attorneys who operate a practice that includes public defense.

Call for Comments: The Commission will consider revisions to the compensation standards at its September 25, 2019, meeting and requests public comments at this time. Your comments and suggestions are crucial to informing the Commission. The results of the overhead study and other information will

be reported at the September meeting as well. Written comments may be emailed to information@pdcom.in.gov or mailed to the Commission’s address above by September 1, 2019.

The following changes to the standards are under consideration:

1. Creation of a minimum salary/contract amount for 100% FTE (and pro-rated down to the FTE of each attorney). This could be the same amount provided to a state-paid deputy prosecutor under IC 33-39-6-2 (\$68,012 or \$74,813 – or the midpoint of the two: \$71,412). Note: This amount adjusts annually based upon judicial salaries.

2. The addition of an amount to cover the cost of overhead and support staff for contractors and part-time salaried individuals, such as \$30,000 for 100% FTE (pro-rated down to the FTE of each attorney).

3. Limiting attorneys who are not full-time salaried from handling 100% FTE, such as limiting them to a caseload of no more than 75% FTE.

4. That chief public defenders should have a cap below the maximum FTE of 100% (full time) and 60% (part time) to compensate for the time commitment for administrative supervisory responsibilities.

5. Possible effective date for any approved changes: January 1, 2021.

The formal request for comment can be found on our website: <https://www.in.gov/publicdefender>.

Illustration of the concepts described in this article:	Base Salary	Overhead (\$30,000 per 1.0 FTE)	Total Amount Paid
Full Time Salary (County Employee) Salary (+ benefits)	\$ 71,412		\$ 71,412
Contractor Capped at .75 FTE	\$ 53,559	\$22,500	\$ 76,059
Contractor Capped at .5 FTE	\$ 35,706	\$15,000	\$ 50,706

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2018 Caseload Data

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Commission Now Hiring
Electronic Submission of Quarterly Forms

Financial Desk Audits Ongoing for All Counties

The Commission continues to analyze the data sent in each quarter to inform the Commission's policies and decision making. To enhance the quality and accuracy of the data we are able to review, we are updating our reimbursement processes. One of the changes is to ensure we are correctly capturing all public defense expenses both in total and in the way the expenses are categorized.

Over the next year, commission staff will be conducting desk audits on each county. During these audits, counties will be asked to submit documentation corresponding to their quarterly report. Generally, we will request detailed payment information (such as a county auditor printout or general ledger log) and possibly copies of invoices or accounts payable vouchers. Counties will receive ample notice of when the backup

documentation is required.

To get an idea of what we'll be looking at, we'll review some samples:

Figure 1:

We'll review the postage totals on the invoice compared to the total postage amount submitted on Form I. We'll also review the total hourly compensation amount listed for this attorney on Forms I, II, and IV to the amounts listed on their accompanying invoices.

Figure 2:

We'll review the payments made to this employee from the auditor printout of transactions and match these amounts up to amounts listed on Forms I, II and IV. Additionally, we may compare the amounts to current pay parity amounts applicable

to the county/position. If you have any questions about the upcoming audits, please contact us at information@pdc.com. in.gov.

Figure 1 (below) is an example of an invoice submitted to the county by an hourly attorney.

	Hrs/Rate	Amount
Postage to client		\$ 0.71
Postage to client		\$ 0.50
Postage to client		\$ 0.50
Postage to client		\$ 0.71
Letter from client		\$ 9.00
Motion/Order for DNA Testing	0.1	\$ 13.50
Postage to client	0.15	\$ 0.50
Attendance at Review Hearing: Waiting Time due to court congestion	1.4	\$ 126.00

Figure 2 (below) is an example of an auditor general ledger report for a specified time period.

Effective Date	Budget Account Code	Check	Description	Receipts	Expenditure	Acct Desc
Fund: 1/11/2002	1000(100 items)					
1/11/2002	1000.10102.000.0271		Payroll	0	5660.15	Chief Public Defender
	19					

Reimbursement Request Tips: Attorney Classification



Contract amounts should be listed on line C1a. Hourly amounts on line C1b.

C. OTHER SERVICES AND CHARGES	
1. Professional Services:	
a. Contract Counsel	
b. Hourly Counsel	

Figure 2 (above)

Appropriately listing attorneys and splitting total compensation is necessary for the commission to ensure accurate data collection, conduct audits, and perform pay parity reviews.

how the attorney is paid. Salaried attorneys (county employees) should be reported under Section A lines 1-4 on Form I. (See figure 1). Other attorneys paid either by contract or on an hourly basis should be listed under Section C Lines 1a and b (see figure 2). On Form II, the column on the far right should denote the status of each attorney. The options are salaried, hourly, or

contract. See figure 3. For counties utilizing attorneys in more than one way, such as a part-time salaried attorney that also received hourly work, the compensation should be listed in the appropriate categories on Form I. Please note: the classification of "assigned" or "appointed" is not correct and should not be used.

Additionally, each attorney record on Form II should have a corresponding caseload record on Forms III and IV. If an attorney is paid, but there are no cases assigned during the previous four quarters, please submit additional information with your emailed submission to explain. If you have any questions on this, please contact Commission staff at information@pdc.com.

Additionally, each attorney record on Form II should have a corresponding caseload record on Forms III and IV. If an attorney is paid, but there are no cases assigned during the previous four quarters, please submit additional information with your emailed submission to explain. If you have any questions on this, please contact Commission staff at information@pdc.com.

A. PERSONAL SERVICES
1. Chief Public Defender Salary
2. Chief Public Defender Benefits
3. Deputy PD Salaries and Compensation
4. Deputy PD Benefits

Figure 1 (below) Salaried attorneys should be listed as either Chief Public Defender or Deputy Public Defender in Section A of Form I.

NAME OF ATTORNEY	NONCAPITAL COMPENSATION PAID DURING QUARTER (\$)	HIGHEST PDCOM "STANDARD E" QUALIFICATION	FULL TIME OR PART TIME?	SALARIED, HOURLY, OR CONTRACT
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Figure 3 (above) On Form II, attorneys should be listed with their name, compensation (not including benefits), highest qualification (ex. Adult Level 1-4), FTE (full-time, .66, etc), and compensation type (salaried, hourly, or contract). If an attorney is paid in multiple ways, a line should be entered for each one.

Commission/Council Launch Project to Develop Indiana-based Indicators of Quality Indigent Defense

In January 2018, the National Legal Aid and Defender Association (NLADA) released a document entitled "National Indicators of Quality Indigent Defense." The document contains 12 practice principles with indicators of a quality public defense attorney.

The Commission and the Indiana Public Defender Council (Council) have been engaged in discussions regarding the importance of both caseloads and performance-based quality measures. In February 2019, the US Department of Justice Bureau of Justice Assistance (BJA) initiated a new round of grant opportunities to receive free training and technical assistance (TTA) for initiatives that support the right to counsel. Bernice Corley with the Council and Derrick Mason with the Commission jointly applied to the BJA for this project and were recently informed that their request for TTA has been approved.

Objective: The objective of the TTA project is to develop Indiana-based indicators of quality indigent defense for adult criminal cases that chief public defenders and local public defense boards can use in the supervision of their county's public defense system. The project will also develop methods for gathering data and monitoring outcomes to determine whether the developed indicators are effective or should be modified. While the scope will be limited to adult criminal cases, it is expected that this project will provide a roadmap for the future development of quality indicators in other areas of public defense practice.

Duration: Staff or contractors from the NLADA and the National Criminal Justice Association will receive funding from the U.S. Department of Justice to provide technical assistance to the Council and Commission, ending around

September of 2020.

Commission staff shall serve as lead agency on the project with Council staff support throughout all aspects of the project. During this timeframe, the technical assistance providers will guide the Council and Commission through the project. The details are still being developed, but it is anticipated that work group(s) will be developed from Indiana-based experts and public defense practitioners to inform the efforts.

The Council and Commission will seek participation from a wide-array of stakeholders and will actively solicit volunteers who are interested in this project to populate the work group(s). **If you would like to volunteer to participate in this project, please contact the Commission.**

It is also anticipated that Commission Members, the Council Board, and the Chief Public Defenders Association will receive regular updates on the project with ample opportunity for input prior to the completion of the project.

Intended Use/Beneficiaries of the Project: The intent behind the project will be to inform local public defense boards and/or chief public defenders of additional performance evaluation options that, when used, will improve public defense outcomes. While these use of these indicators could be required in the future, it should be noted that the Commission does NOT intend for the quality indicators to be used by the Commission to directly evaluate public defender performance or usurp any of the local-based authority for managing the quality of locally-based public defense attorneys. Instead, it is designed to be a tool made available to the county-based managers.

For further information about this project, please contact us at information@pdc.com.

Commission Thanks Larry Landis for Years of Service

Upon his last meeting as Vice Chair of the Public Defender Commission, the Commission took an opportunity to thank Larry Landis for his commitment and to wish him well. Mr. Landis was presented with an engraved plaque, in the shape of



the State of Indiana that was inscribed: "With gratitude for founding the Indiana Public Defender Commission and in tribute to a four-decade career spent in loyal dedication to the cause of public defense in the State of Indiana."

Additionally, the Commission unveiled a new tribute that will remain at the Commission headquarters, intended to honor Mr. Landis. It is inscribed: "This plaque is a tribute to Larry A. Landis for his visionary leadership in public defense; for his service to the State of Indiana, and for founding and serving on the Indiana Public Defender Commission."

Although his term has now expired,

Mr. Landis will remain a member of the Commission until a replacement is named by the Indiana Criminal Justice Institute, which has signaled its intention to make an appointment at its next meeting, scheduled for September 6.



Regionalization: A New Option for Public Defense Offices

With the enactment of Senate Enrolled Act 488, counties now have an additional option to consider in public defense delivery systems: Regionalization. The intention of this option is to create the ability to leverage economies of scale, sharing attorneys, investigators, and other support staff across county lines to provide the best options for public defense delivery. The change in law allows the Commission to reimburse “multicounty” offices in the same manner that counties are currently reimbursed.

In order to create a multicounty system, each county executive must adopt an ordinance allowing the county to enter into an interlocal agreement. The counties would then agree to establish a joint board to oversee the operation. The Commission will provide guidance through the process if requested.

The counties would agree to a single point of contact for commission reimbursement, and the funds would be distributed as agreed to by the interlocal agreement. Advantages of establishing a multicounty office include: 1. Ability to share the cost of the Chief Public Defender and other personnel across county lines; 2. The option to tap expertise in staff from other counties in such matters as Appeals, CHINS, TPR, or other specialty areas where a right to counsel exists; and 3. Centralizing responsibility for fiscal management, limiting the burden to one agreed-upon county.

Regionalization of services is completely optional, and the Commission has no intent to force this option on any county. However, this may be a good option for smaller counties to consider. It may also be an option that could encourage counties not currently participating in the Commission’s reimbursement system to see opportunities for shared expenses both with the state and neighboring counties. The primary purpose of this option is to increase the quality of services provided to public defense clients.

The Commission will be developing further guidance on this concept and it will be covered at our October training seminar. We would also be happy to discuss this option at a local PD Board meeting if requested. If you believe your county may be interested in exploring a regionalization option, please reach out to Commission staff. We would be happy to assist you in coordinating the process.

2019 Legislative Session Brings Mixed Results



Legislative Update

Commission Receives Base Budget Increase

Since the Indiana General Assembly has adjourned for the 2019 legislative session, we would like to take an opportunity to update you on the final status of the Commission’s 2019 Legislative Priorities.

Commission’s Base Budget:

The Commission’s top priority each budget session is advocating for the budgetary increase necessary to account for any new counties, upticks in reimbursement requests for specific case types such as CHINS and TPR, and to avoid even the possibility of proration in the next biennium or beyond.

Commission Chair Mark Rutherford stressed the importance of this request in testimony before both the House Ways and Means Committee and the Senate Appropriations Committee.

We were very pleased the final version of the biennial state budget (HEA 1001) appropriated \$4.47 million more per year to the Public Defense Fund. This was the Commission’s full request, and will allow us to avoid proration in the next biennium.

Misdemeanor & Appellate Funding:

At the request of the Commission, Commission Member & State Representative John Young (District 47: Johnson & Morgan Counties) authored House Bill 1453 to remove the prohibition of misdemeanor reimbursement and to permit centralized appellate services. The state fiscal impact set for those two items by the nonpartisan Legislative Services Agency was \$10.27 million per year.

The bill was originally assigned to

the House Courts and Criminal Code Committee, where it passed by a vote of 12-0 on January 30. The bill was co-authored by Reps Greg Steuerwald (District 40: Hendricks), Commission member Ryan Dvorak (District 8: LaPorte & St. Joseph) and Greg Porter (District 96: Marion). Unfortunately, although this issue did receive momentum and was strongly-considered or inclusion in the final version of the state budget, it was not included in the final version.

More funding for misdemeanor reimbursement and appellate services remains a top fiscal priority for the Commission. We will continue to discuss this issues with policymakers

Regionalization & County Board Structure:

Senate Bill 488 created an optional path for counties to establish regionalized offices. It also changed the structures of some county boards to permit the Commission to make an appointment in lieu of one of the current judicial appointments. The legislation was authored by Sen. Mike Young (District 35: Hendricks & Marion) and co-authored by Commission Members and State Senators Eric Koch (District 44: Bartholomew, Brown, Jackson, Lawrence, Monroe) and Greg Taylor (District 33: Marion). The bill passed the Senate 48-0 and passed the House 91-0. It was signed into law by Governor Eric Holcomb on April 24.

As always, we welcome any questions about our legislative agenda at any time and appreciate your support of our efforts.

Definition of Indigency to be Studied This Summer

Now that the legislative session has come to an end, the General Assembly will begin the process known as “Summer Study Committees.” The Legislative Council (a joint House/Senate Committee composed primarily of members of legislative leadership) met to assign those topics. One topic of particular interest to the Commission has been assigned to the Interim Study Committee on Corrections and Criminal Code.

The Committee has been assigned a topic that reads, in part: “Court costs for indigent individuals...” It is based on Senate Resolution 52 (2019) that reads in part “Whereas, The term ‘indigent individual’ commonly refers to a person who is too poor to hire a lawyer and who, upon indictment, becomes eligible to receive aid from a court-appointed attorney and a waiver of court costs; Whereas, Current Indiana Criminal Code does not define the term ‘indigent’; Whereas, It is unclear how Indiana courts are determining indigence when considering court costs.”

Because the Commission sets standards on this subject matter and because any major changes could have a fiscal impact on the Commission, the Commission has approved staff to be involved in this issue over the interim. We will keep you updated on the status.

Commission to Begin Making Appointments to County Boards

With the change in law made by Senate Bill 488 in the recent legislative session, the Commission has begun the process of making appointments to local county public defense boards.

This change in law affects all counties except those specifically exempted by statute (Allen, Lake, Marion, St. Joseph, and Vanderburgh) and those counties with a population under 12,000 residents, which are not required to maintain a county board under Commission Standards.

The statute indicates that the Commission’s appointment becomes effective upon the expiration of the first term of a current local judicial appointment. (A procedure for filing these vacancies was discussed at the last Commission meeting.) All Commission appointees must be a resident of the county in which they will serve. There is also a new list of specific statutory prohibitions on all appointments. The statute specifically excludes city, town, or county attorneys, law enforcement officers, judges, court employees, public defenders practicing in the county, or DCS employees from serving on the boards.

Commission staff will be seeking nominations from local leaders to fill these positions. In addition to having demonstrated a strong interest in public defense, an ideal candidate will be willing to advocate for local public defense services both at the county and state level.

Appointments will be made on a quarterly basis by the Commission. However, at the previous meeting, the Commission authorized an emergency procedure to fill vacancies between regularly-scheduled meetings. The Chair of the Commission has the discretion to declare a vacancy to be an emergency and appoint a subcommittee of the Chair and two additional Commission members.

If you have not responded to the Commission’s recent communication requesting dates of original appointments and dates of terms for the current PD Board members in the non-exempt counties, please do so as soon as possible. Staff will be reaching out to the appointing authorities of any counties where a response has not been received.

If you have any questions about this provision, please contact Andrew Cullen with the Commission at 317-439-7565 or Andrew.Cullen@pdcom.in.gov.

We hope to make this process fair and effective and welcome any input or nominations of qualified candidates.

June Commission Meeting Update

The Commission met on June 12 for its regular quarterly meeting and addressed a full agenda of items. Issues of note include:

FY 2020 Budget: The Commission approved an internal budget that continues to maintain a very low overhead for operation. Dropping from 3.14% to, 2.67%, this allows for 97.33% of all funding to be reserved for county reimbursement (excluding any reserves). The Commission maintains one of the lowest overhead operating percentages in Indiana State Government.

New Positions: The Commission granted authority to the Senior Staff Attorney to establish new job descriptions for a Staff Attorney and Public Policy/Communications Specialist Position.

Public Policy Updates: The Commission received updates on the legislative session (see “Legislative Update on pages 4 and 5”) and also received an update on a joint project with the Indiana Department of Child Services (DCS) regarding Federal Title IV Funding. Based on a new policy announced by the Children’s Bureau, DCS may be able to seek federal reimbursement for a percentage of state and local costs for the representation of parents who have children who are foster-care eligible. This policy shift is new, and the federal government has not provided extensive guidance on how this reimbursement may work. Staff with the Commission is meeting regularly with staff from DCS to continue to explore this opportunity.

Communication/Guideline Updates: A request for public comments on compensation standards was approved (see “Commission Calls for Public Comments on Compensation Standard” on cover page), and the Commission received notice of a new federal grant to develop quality indicators (see “Commission/Council Launch Project to Develop Indiana-based Indicators of Quality Indigent Defense” on page 3).



In recognition for his final meeting as Vice Chair, the Commission awarded Larry Landis with a plaque of appreciation. Front Row: Judge Steven Meyer, Vice Chair Larry Landis, David Hensel, Chair Mark Rutherford; back row: former Senator Richard Bray, Senator Eric Koch, Judge Mary Ellen Diekhoff, and Judge Kelsey Hanlon

also approved, to be effective January 1, 2020 (Table 1). Based on Standard G, these salaries must be identical to the salaries of prosecutors and chief deputy prosecutors, which go into effect July 1.

Position	Salary Eff. 7/1/2019
Prosecutor (1.0 Full-time Equivilant)	\$151,137.43
Prosecutor at .66 FTE	\$99,750.00
Prosecutor at .60 FTE	\$90,682.00
Chief Dep. Pros. (1.0 FTE)	\$113,353.07
Chief Dep. Pros. at .66 FTE	\$74,812.50
Chief Dep. Pros. at .60 FTE	\$68,011.50

Table 1: Prosecutor salaries eff. 7/1/2019. Corresponding Chief and Chief Deputy Public Defenders have until January 1, 2020 to be in pay parity.

Fiscal Updates: The Commission approved all pending requests for Capital and Non-Capital Caseloads. Staff reported

that 90% of current Commission counties are in compliance with standards, an improvement from 84% in the previous quarter. The status of the Public Defense Fund remains strong at this time, although it was necessary to dip into the reserve to cover the remaining FY 2019 expenses. However, with the additional appropriation secured in the recently-passed state budget, staff reported that proration of county expenses is not anticipated at this time.

Chief Public Defender Job Description: The Commission reviewed an updated draft of a model job description for the position of Chief Public Defender. It was developed along with the Chief Public Defenders Association. This job description is intended to serve as a guideline. The Commission recognizes that each public defender office is unique. A copy of the job description may be found on the Commission’s website.

As always, full minutes of each meeting may be found on the Commission’s website at: <https://www.in.gov/publicdefender/2343.htm>. If you have any additional questions, please do not hesitate to contact us.

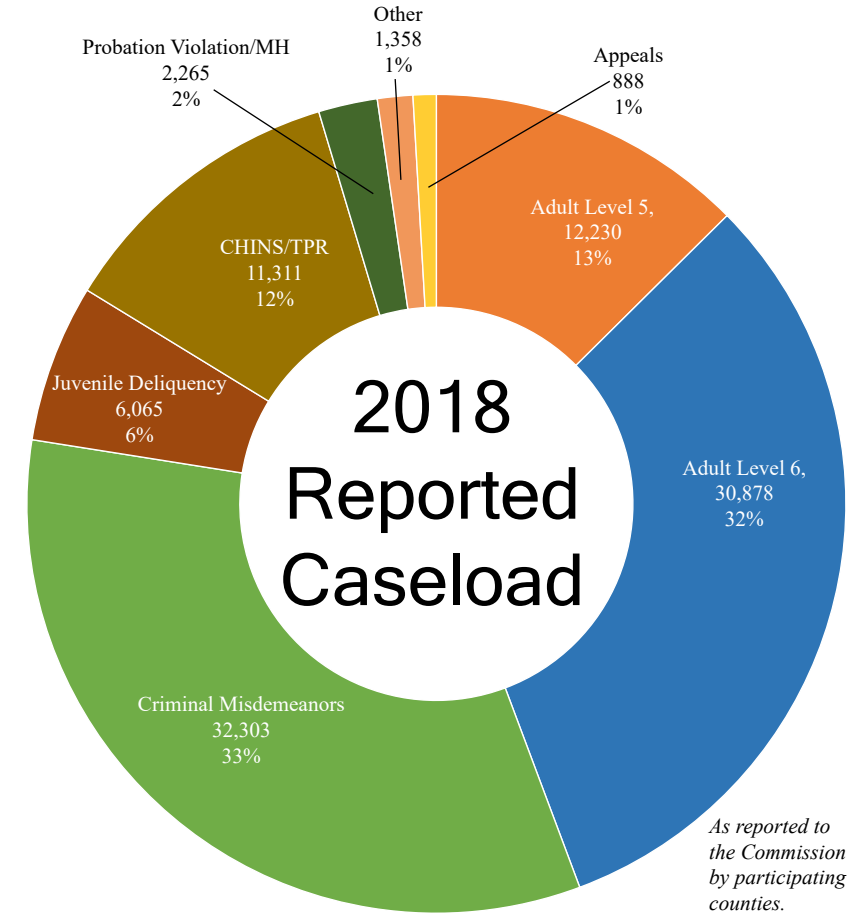
Commission Finalizes 2018 Caseload Statistics

Every quarter, counties participating in the Commission’s reimbursement program submit caseload statistics (Form III). These numbers are used to not only audit attorney workload compliance, but also to assist the Commission in the development of cost projections and monitor trends.

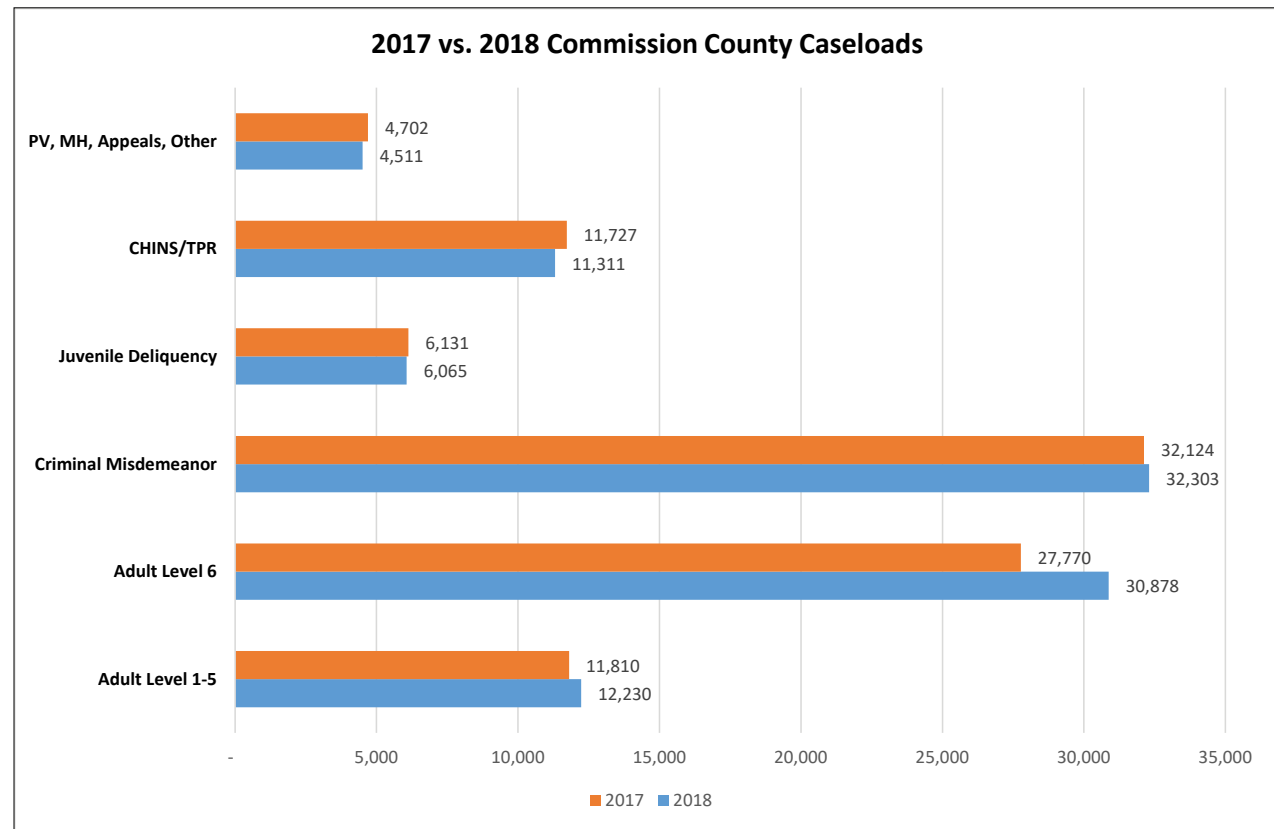
Between 2017 and 2018, overall caseload increased from 94,264 to 97,298. Although most case categories have increased in the number of cases, a portion of this increase is attributable to Brown, Clinton, Miami, and Scott Counties joining (or rejoining) the Commission. Removing the caseload associated with these counties allows a more accurate assessment of actual caseload trends.

Adult major felony (+1%), misdemeanors (-2%), and juvenile delinquency (-2%) caseloads are all relatively stable. CHINS and termination caseload has decreased significantly at -6%. Conversely, Level 6 Felonies (+8%), Probation/Mental Health (+5%), and Appeals (+8%) caseloads all increased significantly. Finally, the “Other” category shows a major decrease of -27%, but this category is highly variable, and is generally a quite small portion of reported caseload, so this difference should not be over-interpreted.

Keep in mind that these trends are a statewide average, and caseloads vary greatly across counties, so general trends will almost certainly not match any given county perfectly.



As reported to the Commission by participating counties.



Commission Meeting Dates

September 25, 2019

December 18, 2019

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



Reimbursement Requests

2nd Quarter 2019 due August 14, 2019 (remember to submit electronically!)

3rd Quarter 2019 due November 14, 2019



Join Our Team!

The Commission is seeking qualified applicants to fill the position of staff attorney. The job summary is: Audits reimbursement requests and provides onsite trainings, investigates allegations of violations of Commission standards by defendants, assists staff with the collection and collation of observational and other data, and helps facilitate groups to develop and revise Commission Standards and Guidelines. Reports directly to the Senior Staff Attorney.

The full job description, including application requirements, is posted on the Commission's website. For further information about the position, please contact Derrick Mason at Derrick.Mason@pdcom.in.gov.

Electronic Submission of Quarterly Reports Now Required

At the June 12, 2019 meeting, the Commission voted to require the quarterly requests for reimbursement be submitted electronically (in Excel format).

Effective with the 2Q2019 submission (due August 14, 2019), Forms I-IV must be emailed in Excel file format to information@pdcom.in.gov. Additionally, the Commission voted to approve electronic signatures. Form V may now signed and scanned to us. Counties should maintain the original signatures on file. No hard copies should be mailed to us anymore!



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LinkedIn: [Indiana Public Defender Commission](https://www.linkedin.com/company/Indiana-Public-Defender-Commission)

This Commission has established Twitter and LinkedIn Accounts, which we use to keep followers up-to-date on the latest news about our efforts to empower counties to make good public defense choices. Please follow us and ask your colleagues to do so as well.

Derrick Mason, Senior Staff Attorney

derrick.mason@pdcom.in.gov

Andrew Cullen, Policy and Communications Specialist

andrew.cullen@pdcom.in.gov

Paula Diaz, Administrative Assistant

paula.diaz@pdcom.in.gov

Torrin Liddell, Research and Statistics Analyst

torrin.liddell@pdcom.in.gov

Jennifer Pinkston, Fiscal Analyst

jennifer.pinkston@pdcom.in.gov

309 West Washington Street,
Suite 501

Indianapolis, IN 46204

ph. 317-233-6908

information@pdcom.in.gov

www.in.gov/publicdefender