

PUBLIC DEFENDER COMMISSION NEWS

July 2011

Volume 4, Number 2

2011 COMMISSION MEETING DATES.

<p>September 21, 2011 2:00 p.m. 30 South Meridian St., Suite 804 Indianapolis</p>	<p>December 14, 2011 2:00 p.m. 30 South Meridian St., Suite 804 Indianapolis</p>
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IMPORTANT DEADLINES.

To be timely filed, non-capital requests for reimbursement are due in the office of staff counsel on the following dates:

<p>August 14, 2011 2nd Quarter Due</p>	<p>November 14, 2011 3rd Quarter Due</p>
<p>February 14, 2012 4th Quarter Due</p>	

The filing deadline for reimbursement requests in capital cases is 120 days from the date the county auditor pays the underlying expense.

SHOW ME THE MONEY

Thank you to the Indiana General Assembly for increasing court fees for public defense costs in 2011-12. IC 33-37-7-9(c)(2) directs the State Auditor to distribute court fees to the Public Defense Fund. The annual distribution by statute of \$5.4 million has been increased to \$7.4 million. Sen. Luke Kenley and the legislators serving on the Indiana Public Defender Commission, Sen. Tim Lanane, Sen. Brent Steele, Rep. Vernon Smith and Rep. Greg Steuerwald, were instrumental in pushing forward this legislation. The Public Defense Fund will have \$20.25 million to distribute to eligible Indiana counties in the coming fiscal year.



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Commission Members:

Mark W. Rutherford,
Chairman, Indianapolis,
serving since May 2007

Larry Landis,
Indianapolis, serving
since June 2011

Sen. Timothy Lanane,
Anderson, serving since
October 1998

David J. Hensel,
Indianapolis, serving
since May 2007

Peter D. Nugent,
Indianapolis, serving
since May 2007

**Hon. Judge Diane Ross
Boswell, Crown Point,**
serving since April 2008

Rep. Vernon Smith,
Gary, serving since
November 2008

Rep. Greg Steuerwald,
Danville, serving since
November 2008

Sen. Brent Steele,
Bedford, serving since
March 2009

Hon. Mary Ellen Diekhoff,
Bloomington, serving
since May 2010

Hon. James R. Ahler,
Rensselaer, serving since
October 2010

SUSAN CARPENTER RETIRES FROM COMMISSION

At the June 15, 2011 meeting, Mark Rutherford, Chairman of the Indiana Public Defender Commission, presented the Indiana Supreme Court's Certificate of Appreciation to Susan Carpenter for her years of service as a member of the Commission. Ms. Carpenter, retired State Public Defender, served on the Commission from 1989 to 2011; she was the appointment of the Indiana Criminal Justice Institute. In the twenty-two years that Susan was a member, the Commission developed and was instrumental in the passage of the Indiana Supreme Court's Criminal Rule 24 which sets the standards for capital cases in Indiana. In 1995, the Commission adopted Standards for Indigent Defense Services in Non-capital Cases when the Indiana legislature, by statute, allowed the reimbursement from the Public Defense Fund for defense services in felony cases. Ms. Carpenter participated in the approval of comprehensive plans for delivering non-capital indigent defense services for sixty of the ninety-two counties in Indiana, and the distribution of \$107 million to counties eligible to receive reimbursement from the Public Defense Fund. Susan Carpenter was the longest serving member of the Commission and will certainly be missed.

NEW COMMISSION MEMBER

At the June 17, 2011 meeting of the Indiana Criminal Justice Institute, board member Larry Landis was named as the Institute's appointment to the Indiana Public Defender Commission, replacing Susan Carpenter. Although Mr. Landis has never served as a member of the Commission, it was his work beginning in 1974 that resulted in the creation of the Public Defense Fund and the Indiana Public Defender Commission. He has served as an advisor to the Commission since it was formed in 1989. Larry Landis is also the Executive Director of the Indiana Public Defender Council.

QUARTERLY MEETING HIGHLIGHTS

In March and June of this year, The Indiana Public Defender Commission approved reimbursement claims for 50% of Boone, Lake, Madison, Marion and Vanderburgh Counties' death penalty defense costs in the amount of \$143,311.22 and \$74,556.61, respectively. Fifty-one counties requested a 40% reimbursement of their public defense expenses for the fourth quarter of 2010 at the March 23, 2011 meeting. The approved reimbursements for non-capital costs totaled \$4,190,201.30. In June, fifty-two counties submitted requests for a 40% reimbursement of their first quarter 2011 public defense costs from the Public Defense Fund. At that meeting, the Commission approved claims for eligible non-capital indigent defense costs in the sum of \$4,037,064.75.

NEW COUNTY IN REIMBURSEMENT PROGRAM

Delaware County became the 60th Indiana county to join the Indiana Public Defender Commission's program for the improvement of public defense in Indiana. Delaware County Public Defender Board established a public defender agency with Jack Quirk as its Chief Public Defender. The comprehensive plan for providing indigent defense services in Delaware

County was approved at the March 23, 2011 meeting of the Commission. Its first request for reimbursement submitted for approval at the June 15, 2011 meeting returns \$104,576.26 to the county from the Public Defense Fund.

WARNING ABOUT STANDARD A

The first Standard in the Standards for Indigent Defense Services in Non-Capital Cases states:

A county with a population over 12,000 persons shall establish a county public defender board. Counties subject to I.C. 33-40-7-1 shall establish a county public defender board pursuant to this statute. Counties excluded from I.C. 33-40-7-1 shall establish a county public defender board under I.C. 36-1-3 with powers and duties consistent with I.C. 33-40-7-6. **A lawyer who provides representation to indigent persons shall not be appointed to a county public defender board.** (Emphasis added).

Attorneys who are county public defender board members may not accept indigent defense appointments from the court(s) under any circumstances – not for civil contempt, appeals, termination cases, etc. If there has been a misunderstanding in your county, please contact staff counsel, Deborah Neal at 317-232-2542.

“BAIL & SWITCH?”

When an indigent person is charged with a crime and requests the court appoint an attorney to represent him, may a judge substitute appointing public defense counsel with returning defendant’s cash bond upon the condition he hire private counsel?

Mike McMahon, Director of Research at the Indiana Judicial Center, suggests that in order for a refund to justify discontinuing court-appointed representation, the following two things would be required:

- (1) There would have to be a determination that the bail deposit is in fact the defendant’s and not some other person’s, so that the defendant in fact will be free to spend the bail deposit as he or she chooses if it is refunded, and
- (2) There should then be a comprehensive judicial reassessment of the defendant’s financial circumstances based on the premise that the entire bail deposit will be refunded and a conclusion, after application of the *Moore* standard below, that the defendant will have the means to retain counsel without undue hardship.

Mr. McMahon explains that merely refunding the bail deposit does not amount to a determination that the person is no longer lacking the resources required to hire counsel without hardship under the *Moore* formulation. *Moore v. State*, 273 Ind. 3, 401 N.E.2d 676, 678 (1980). See also *Elliott v. Elliott*, 634 N.E.2d 1345 (Ind. Ct. App. 1994) (observing that federal poverty guidelines are inappropriate for indigence determination for civil case right-to-counsel).

In *Moore*, the court stated that "[t]he fact that the defendant was able to post a bond is not determinative of his non-indigency but is only a factor to be considered." This principle was applied in *Graves v. State* (1st Dist. 1987), Ind.App., 503 N.E.2d 1258, and resulted in a reversal of the conviction because the defendant waived his right to

LINKS TO FORMS AND GUIDELINES:

Locate Reimbursement Forms [here](#)

Locate Guidelines For Capital Case Reimbursements [here](#)

Locate Guidelines and Standards for Non-capital Case Reimbursements [here](#) and [here](#)

COUNTIES RECEIVING REIMBURSEMENTS

Adams	Marion
Allen	Martin
Benton	Monroe
Blackford	Montgomery
Carroll	Noble
Clark	Ohio
Decatur	Orange
Delaware	Parke
Fayette	Perry
Floyd	Pike
Fountain	Pulaski
Fulton	Rush
Grant	Saint Joseph
Greene	Shelby
Hancock	Spencer
Howard	Steuben
Jasper	Sullivan
Jay	Switzerland
Jennings	Tippecanoe
Knox	Union
Kosciusko	Vanderburgh
LaGrange	Vermillion
Lake	Vigo
LaPorte	Wabash
Lawrence	Warren
Madison	Washington

counsel after the trial court denied a request for appointed counsel "merely because he posted bond".

The determination as to the defendant's indigency is not to be made on a superficial examination of income and ownership of property but must be based on as thorough an examination of the defendant's total financial picture as is practical. The record must show that the determination of ability to pay includes a balancing of assets against liabilities and a consideration of the amount of the defendant's disposable income or other resources reasonably available to him after the payment of his fixed or certain obligations. *People v. Castile*, (1979) 71 Ill. App. 3d 728, 390 N.E. 2d 426; *Minniefield v. State*, (1972) 47 Ala. App. 699, 260 So. 2d 607; *Morgan v. Rhay*, (1970) 78 Wash. 2d 116, 470 P. 2d 180.

The court's duty to appoint competent counsel arises at any stage of the proceedings when the defendant's indigency causes him to be without the assistance of counsel. *State ex rel. Grecco v. Allen Circuit Court*, (1958) 238 Ind. 571, 153 N.E. 2d 914; *State ex rel. Shorter v. Allen Superior Court*, (1973) 155 Ind. App. 269, 292 N.E. 2d 286. *Moore v. State*, 273 Ind. 3, 401 N.E.2d 676, 678 (1980).

Standard C of the Standards for Indigent Defense Services in Non-Capital Cases, adopted in 1995 by the Indiana Public Defender Commission, was patterned after *Moore* and outlines the **substantial hardship standard** for determining eligibility of appointed counsel. The language of Standard C must be included in each county's comprehensive plan and adhered to in order for the county to be eligible for reimbursement from the Public Defense Fund.

IS YOUR COUNTY INTERESTED IN THE PUBLIC DEFENSE FUND REIMBURSEMENT PROGRAM?

If a county is interested in exploring the possibility of receiving reimbursement money from the Public Defense Fund, staff counsel for the Commission is available to provide costs and staffing estimates for the county. Once a county has decided to seek reimbursements, the first step is for the county commissioners to pass an ordinance creating a county public defender board, following state statute 33-40-7. The newly formed board then develops a comprehensive plan for delivery of public defense services in the county under state statute 33-40-7-5. The county public defender board could choose to have a public defense office, contract counsel, assigned counsel, or any combination of the three. The comprehensive plan must then be presented to the Indiana Public Defender Commission for approval. If a comprehensive plan is approved by the Commission, a county may then request reimbursement of its felony and juvenile public defense costs quarterly. At this time, misdemeanor, civil contempt, children-in-need-of services, termination of parental rights, guardian ad litem and juvenile paternity cases are not reimbursable by the Public Defense Fund, even though public defense attorneys are assigned to represent those indigent defendants, and the county pays for that representation.

It is important that the county public defense program remain in compliance with the Commission's Standards at all times to be eligible for reimbursement from the Public Defense Fund. For example, there is a Standard regarding the

maximum number of newly assigned cases an attorney may take in a 12-month period; a Standard for the minimum hourly rate paid for attorney services; a Standard for the required qualifications of attorneys to be assigned certain classes of criminal cases; a Standard that specifies what should be in contracts for defense services; and a Standard for training and professional development of public defense attorneys. The Standards for Indigent Defense Services in Non-capital Cases are located on the Commission’s website at www.courts.in.gov/pdc.

In addition to the on-site assistance and evaluation offered to an interested county by staff counsel, sample ordinances, comprehensive plans and contracts are available upon request.

Contact Us:

Indiana Public Defender Commission

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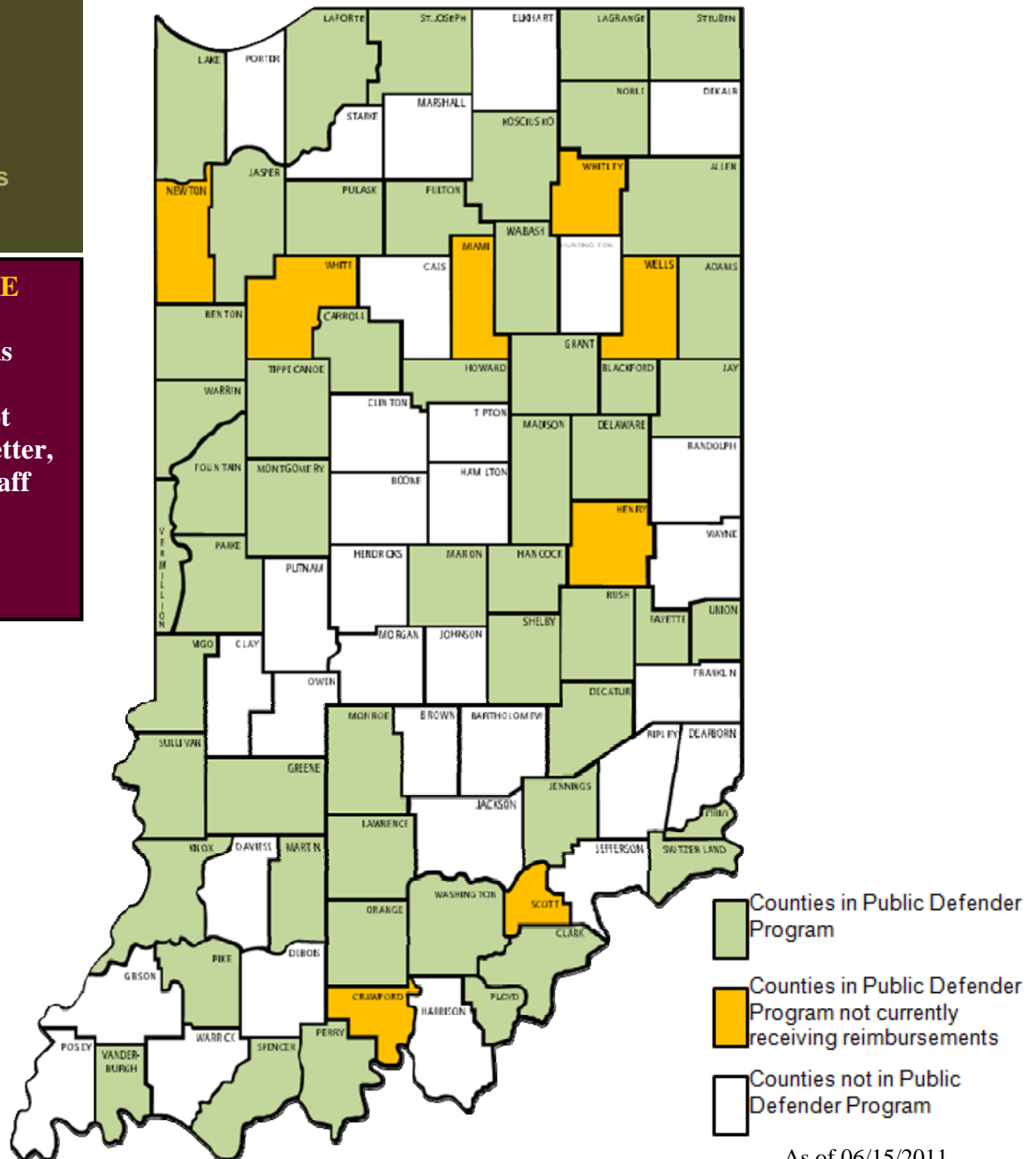
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IS YOUR COUNTY IN THE REIMBURSEMENT PROGRAM?



A MESSAGE FROM THE STAFF:
We hope that you find this edition of our newsletter informative. If you do not wish to receive the newsletter, please send an email to staff counsel Deborah Neal at dneal@courts.state.in.us