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Public Defender Commission

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Commission Finalizes Legislative Agenda

On September 19, the Commission approved its legislative agenda which was previously released for public comment on August 22nd. The Commission discussed the multiple letters that had been submitted for public comment and also heard from the Chief Public Defenders of Lake, Marion, and Noble Counties, who were present at the meeting.

The priorities for the Commission moving into this legislative year will include: (1) securing the base budget for the Commission, (2) reimbursement for all case types, including misdemeanors, (3) a statewide

appellate office with a juvenile defense team, (4) allowing counties to form regions under the Commission reimbursement system, and (5) seeking a change to the Public Defender Boards to transfer one of the two judicial appointments to the Commission to select a local appointment. The Commission clarified that the very first priority should be to secure the base budget, followed by seeking funding to reimburse all case types.

Commission votes to support uniform statewide standards as a long-term goal

The Commission also discussed the issue of standards being following in all counties, which was strongly supported by David Carroll of the Sixth Amendment Center who attended the meeting. Mr. Carroll explained that the uneven landscape of public defense services is due to the fact that the State of Indiana fails to recognize that the guarantee of public defense services is a state obligation, not just a county one. Members of the Commission discussed this issue

and determined that the issue of uniform statewide standards should be a core principle, with a plan to build towards this goal over time. The Commission voted that it was the official opinion of the Public Defender Commission that the state is responsible for overseeing the quality of the right to counsel in all courts in Indiana in which counsel is provided at public expense.

Commission approved general reform efforts in addition to priorities

The Commission also voted to generally support the following principles should the staff see the opportunity to pursue these initiatives, but clarified that they are not to be prioritized over the previously discussed legislative goals. These initiatives included: (1) authorization and funding for a TPR/CHINS pilot project, (2) discretionary grants/awards, and (3) a regional support services pilot project.

The Commission does not operate in a vacuum and wants public defenders to help shape these system reforms. See *Working Groups* article to the right for more information.

Public Defenders Sought for Working Groups

The Commission members directed staff to create working groups as needed to help clarify legislative concepts that require significant changes to the current system. The State Appellate Office is one such system that will require input from current practitioners to ensure that it meets the needs of the state.

A second working group to investigate regionalization is also being formed. If you are interested in being part of either working group, please contact Kathleen Casey at Kathleen.casey@pdcom.in.gov.

Additionally, if you believe that your county would be impacted by any of these reforms, or wish to provide your comment, please contact the Commission staff at information@pdcom.in.gov. The Commission staff want to hear from you and ensure that these reforms will help to improve your community!



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Task Force on Public Defense Releases Findings

To identify its legislative agenda, the Indiana Public Defender Commission looked to the report of the Indiana Task Force on Public Defense. Judge Tinder provided a summary of these findings to a special meeting of the Public Defender Commission on August 22nd.

To create its findings, the Task Force reviewed multiple Indiana-specific reports, including historic and contemporary assessments of public defense quality, the opinions and reports from national experts, a survey conducted on behalf of the Task Force by ISP Consultants, the testimony provided at a statewide listening tour and independent site observations by staff. A summary of findings are as follows:

- Uneven access to counsel: Many Hoosiers who would qualify for the assistance of a defense attorney are either unable to access counsel or encouraged to represent themselves, even when facing jail time and/or serious collateral consequences. According to a survey conducted by the Task Force, 76.34% of respondents agree there is pressure on courts to move through cases quickly due to time constraints.
- Excessive misdemeanor caseloads: Because the Commission does not provide reimbursement for misdemeanor cases, compliance with the misdemeanor caseload standards are not required. As a result, even in counties eligible for state reimbursement, many counties have excessive misdemeanor caseloads. Misdemeanors carry the possibility of incarceration and have significant collateral consequences. For more information, see pages 46-48 of the full report for further discussion of the ongoing damage that may be caused by even seemingly minor convictions.
- No uniform system for assessing and measuring quality of service: The Indiana Public Defender Commission is tasked with recommending how best to improve public

defense in the state. Yet the Commission does not audit for quality of any attorney performance because of a lack of standards, and a lack of staff to enforce the standards adopted. Currently, the Commission only audits a county system on three metrics: caseloads, compensation, and experience. These metrics are not adequate to ensure lawyers are meeting minimum standards of representation.

• A need for more attorney training requirements: While there are many committed, experienced public defenders and excellent trainings offered by the Public Defender Council, there are few requirements for ongoing qualification and training beyond certain minimal Commission standards, especially in non-capital defense.

• Inadequate compensation: The compensation paid to salaried and contractual public defenders is inadequate and creates economic disincentives to adhere to best practices, such as conducting an independent factual investigation prior to advising a client to enter a guilty plea.

• The presence of conflicts of interest: Attorneys in some counties face a perceived conflict of interest because they are employed by the judge before whom they appear. This relationship has the potential to undermine the relationship between attorney and client.

• A need for more investigators: Given the rise in scientific techniques and new technologies, expert help is needed now more than ever for public defenders and appointed counsel. Independent investigation, including the use of experts and investigators—in addition to the efforts of the attorney—is a requirement set out in national practice standards. Since 1977, Indiana has seen 35 people exonerated after being wrongfully convicted. While not necessarily directly caused by a lack of investigators, this fact illustrates the need to thoroughly and independently investigate cases.

• A need for interpreters and social workers: Interpreters are essential to ensure defense attorneys are able to communicate with their clients; social workers are essential to ensure defendants are able to access treatment and to reduce recidivism. Yet these essential services are often beyond the reach of many public defenders and appointed counsel practicing in our state.

• A need for greater service in child welfare: The significant increase in CHINS/TPR cases throughout the state requires greater public defense resources from the state.

• A possible requirement for counsel to be present at initial (or detention) hearings: According to some interpretations, Criminal Rule 25 requires counsel to be appointed for a juvenile prior to an initial or detention hearing. The adoption of a new rule in Criminal Rule 26 and the creation of new evidence-based practices in pre-trial release may require counsel to be present at the initial hearing and be prepared to be an advocate, if the risk assessment determination is held to be a critical stage of the proceeding. In the majority of counties, public defenders are not appointed until the initial hearing and are not present in court to provide representation at this stage.

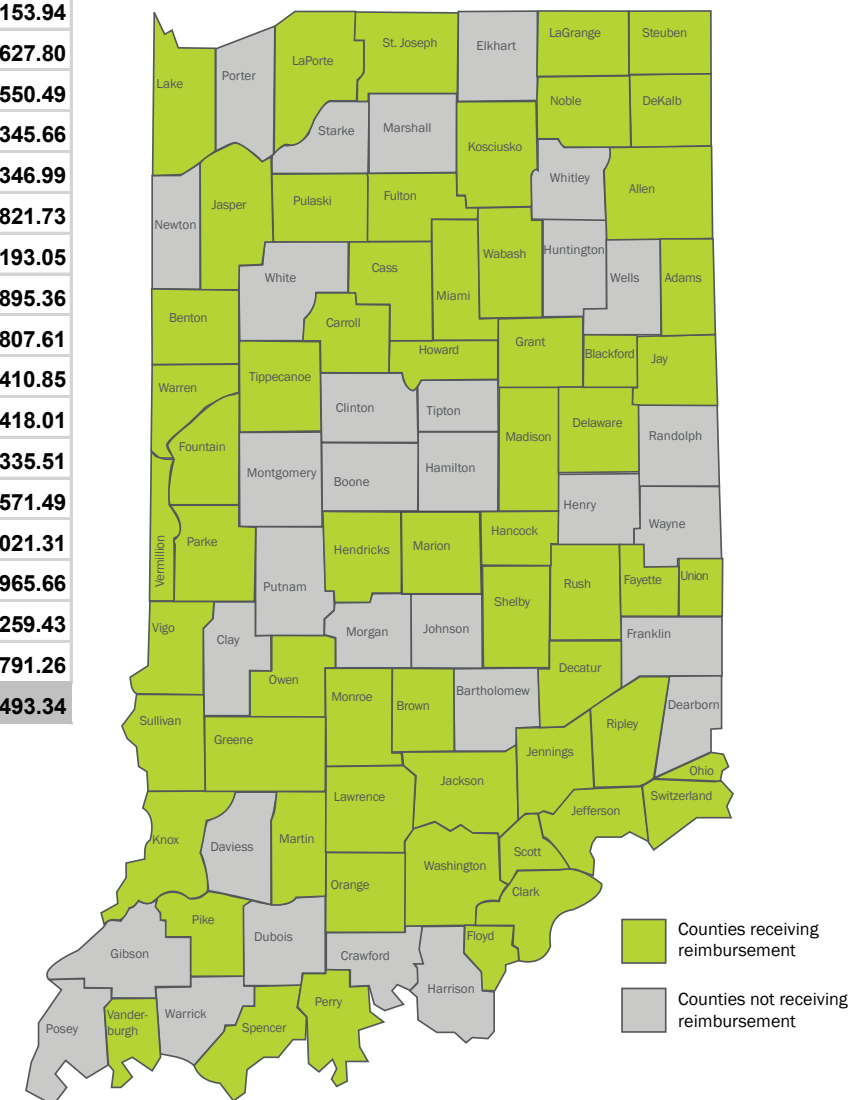
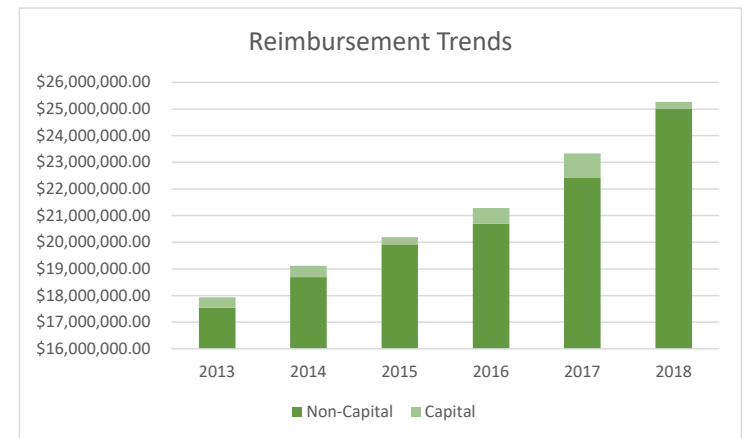
• Inadequate Commission staff: The size of the Commission's staff is insufficient to determine county compliance with standards and guidelines.

• An uneven application of standards: The Task Force found that there are standards for Commission counties, but none for non-Commission counties that did not seek reimbursement. This leads to an uneven landscape of public defense quality across the state.

The full report can be found on the Commission website: <https://www.in.gov/publicdefender/2333.htm>.

Commission Ends State Fiscal Year with Record Reimbursements in Non-Capital Claims

COUNTY	2017-18	COUNTY	2017-18
ADAMS	\$114,704.49	MADISON	\$768,856.43
ALLEN	\$1,642,160.56	MARION	\$7,830,981.64
BENTON	\$17,465.31	MARTIN	\$99,346.42
BLACKFORD	\$65,495.51	MIAMI	\$55,574.20
CARROLL	\$82,887.83	MONROE	\$750,868.94
CASS	\$210,936.88	NOBLE	\$256,025.57
CLARK	\$447,389.11	OHIO	\$24,312.70
DECATUR	\$97,076.88	ORANGE	\$200,865.35
DEKALB	\$215,005.57	OWEN	\$103,956.18
DELAWARE	\$538,231.30	PARKE	\$40,287.81
FAYETTE	\$124,828.32	PERRY	\$81,498.73
FLOYD	\$239,271.16	PIKE	\$86,267.92
FOUNTAIN	\$42,517.04	PULASKI	\$138,924.72
FULTON	\$86,697.70	RIPLEY	\$95,153.94
GRANT	\$444,253.28	RUSH	\$152,627.80
GREENE	\$180,920.67	ST. JOSEPH	\$914,550.49
HANCOCK	\$218,235.89	SCOTT	\$40,345.66
HENDRICKS	\$324,674.93	SHELBY	\$169,346.99
HOWARD	\$573,970.66	SPENCER	\$102,821.73
JACKSON	\$265,886.37	STEUBEN	\$129,193.05
JASPER	\$89,644.20	SULLIVAN	\$75,895.36
JAY	\$130,148.36	SWITZERLAND	\$72,807.61
JEFFERSON	\$208,765.45	TIPPECANOE	\$1,060,410.85
JENNINGS	\$154,936.27	UNION	\$39,418.01
KNOX	\$277,443.38	VANDERBURGH	\$876,335.51
KOSCIUSKO	\$253,138.16	VERMILLION	\$80,571.49
LaGRANGE	\$76,610.48	VIGO	\$797,021.31
LAKE	\$1,862,921.08	WABASH	\$120,965.66
LaPORTE	\$307,106.56	WARREN	\$40,259.43
LAWRENCE	\$322,887.18	WASHINGTON	\$184,791.26
		TOTAL	\$25,006,493.34



With the addition of Hendricks County and re-joining of Scott and Miami Counties, Commission membership and reimbursements grew to record breaking levels in fiscal year 2018. Reimbursements exceeded \$25M in non-capital cases. Capital case reimbursement for the fiscal year was \$256,896.15.

Clinton County Joins Commission Program

The Indiana Public Defender Commission would like to send a warm welcome to our newest participating county, Clinton County! Clinton County was created in 1830 and had a population of approximately 32,609 in 2015. Clinton County is located in central Indiana. Judge Mohler led the charge in developing the local Public

Defender Board and getting support for their new program. The county previously used an hourly model for public defense. We are pleased that many of these attorneys will now have caseload caps and higher rates of pay. Their courthouse is listed on the National Register of Historic Places. Welcome Clinton County!



Annual Training to be Held October 2

Please mail or scan and email this portion to Indiana Public Defender Commission, 309 W Washington Street Suite 501, Indianapolis, IN 46204 or email to information@pdc.com.

Name _____ County _____

Business Address _____

City _____ IN Zip _____ Phone number _____

Email Address _____

Title _____ Parking Needed (yes/no) _____

Topics you would like addressed _____

Specific questions you would like addressed _____

By signing below, I agree to pay a "no show" fee of \$20 if I fail to cancel my registration by September 25, 2018

Signature _____ Date _____

- Training Topics
- Forms overview and update
 - Supplemental fund use
 - Obtaining funding/working with County Councils
 - Self-Insurance
 - Caseload Study and Task Force Updates
 - Data Analysis
 - 2019 Forms update preview
 - **NEW 2019 Reporting Requirements** (private caseloads)
 - Commission Resources

Complete the registration form above and contact Commission staff immediately if you'd like to attend the training.



Why was my reimbursement reduced?

If your reimbursement request is submitted after the deadline, the amount reimbursed will likely be reduced.

Per Commission guidelines, penalties may be assessed to late submissions.

"12/15/05 (Amended Guideline) To be eligible for maximum reimbursement, claims in non-capital cases must be received by the Commission not later than forty-five (45) days after the end of the calendar quarter in which they were incurred. Claims received 1 to 10 days later than 45 days after the end of the calendar quarter will be penalized 10% of the maximum eligible reimbursement. Claims

received 11 to 20 days later than 45 days after the end of the calendar quarter will be penalized 25% of the maximum eligible reimbursement. The Commission will deny all late claims received more than 65 days after the end of the calendar quarter."

If you have any questions or anticipate any issues submitting your request for reimbursement timely, please contact Commission staff immediately. As a reminder, submissions (other than Form V) may be sent electronically in Excel format to information@pdc.com. Form V with original signatures must be mailed in to the Commission.

2018 Commission Meeting Dates

December 12

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



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