

**IC 33-40**

**ARTICLE 40. PUBLIC DEFENDERS**

**IC 33-40-1**

**Chapter 1. State Public Defender**

**IC 33-40-1-1**

**Appointment; qualifications**

Sec. 1. (a) The office of state public defender is established.

(b) The state public defender shall be appointed by the supreme court, to serve at the pleasure of the court, for a term of four (4) years.

(c) The state public defender must be:

(1) a resident of Indiana; and

(2) a practicing attorney in Indiana for at least three (3) years.

(d) The supreme court may give any tests it considers proper to determine the fitness of an applicant for appointment.

*As added by P.L.98-2004, SEC.19.*

**IC 33-40-1-2**

**Representing penal institution inmates**

Sec. 2. (a) The state public defender shall represent a person who is:

(1) confined in a penal facility in Indiana or committed to the department of correction due to a criminal conviction or delinquency adjudication; and

(2) financially unable to employ counsel;

in a postconviction proceeding testing the legality of the person's conviction, commitment, or confinement, if the time for appeal has expired.

(b) The state public defender shall also represent a person who is committed to the department of correction due to a criminal conviction or delinquency adjudication, and who is financially unable to employ counsel, in proceedings before the department of correction or parole board, if the right to legal representation is established by law.

(c) This section does not require the state public defender to pursue a claim or defense that is not warranted under law and cannot be supported by a good faith argument for an extension, a modification, or a reversal of law, or that for any other reason is without merit.

(d) This section does not prohibit an offender from proceeding on the offender's own behalf or otherwise refusing the services of the state public defender.

*As added by P.L.98-2004, SEC.19.*

**IC 33-40-1-3**

**Seal of office; powers of public defender**

Sec. 3. (a) The state public defender shall be provided with a seal of office on which appear the words "Public Defender, State of

Indiana".

(b) The state public defender may:

- (1) take acknowledgments;
- (2) administer oaths; and
- (3) do all other acts authorized by law for a notary public.

An act performed under this section must be attested by the public defender's official seal.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-1-4**

##### **Salary; employees; office and supplies**

Sec. 4. (a) The state public defender shall be paid an annual salary to be fixed by the supreme court.

(b) The state public defender may, with the consent of the supreme court, appoint or employ, at compensation to be fixed by the supreme court, the deputies, stenographers, or other clerical help that may be required to discharge the public defender's duties.

(c) The state public defender shall be provided with an office at a place to be located and designated by the supreme court.

(d) The state public defender shall be paid the state public defender's actual necessary and reasonable traveling expenses, including cost of food and lodging when away from the municipality in which the public defender's office is located and while on business of the office of the public defender.

(e) The state public defender shall be provided with:

- (1) office furniture, fixtures, and equipment; and
- (2) books, stationery, printing services, postage, and supplies.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-1-5**

##### **Transcript of court proceedings**

Sec. 5. The state public defender may order on behalf of a prisoner the public defender represents a transcript of any court proceeding, including evidence presented, had against the prisoner, and depositions, if necessary, at the expense of the state. However, the public defender may stipulate as to the facts contained in the record of any court, or as to the substance of testimony presented or evidence heard involving any issue to be presented on behalf of the prisoner, without the testimony or evidence being fully transcribed.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-1-6**

##### **Claims for salary or expenses; appropriation**

Sec. 6. All claims for salary or other expenses authorized by this chapter shall be allowed and approved by the supreme court. There is appropriated annually out of funds of the state not otherwise appropriated a sufficient amount to pay salaries and expenses authorized by this chapter.

*As added by P.L.98-2004, SEC.19.*

## **IC 33-40-2**

### **Chapter 2. Public Defenders**

#### **IC 33-40-2-1**

##### **Request to state public defender**

Sec. 1. (a) Upon a determination by the judge of any court having criminal jurisdiction that:

- (1) the court is unable within a reasonable time to appoint an available attorney, public defender or otherwise, who is competent in the practice of law in criminal cases as legal counsel for any person charged in the court with a criminal offense and who does not have sufficient means to employ an attorney; or
- (2) in the interest of justice an attorney from another judicial circuit, not regularly practicing in the court, should be appointed to defend the indigent defendant or appeal the defendant's case, but the judge is unable within a reasonable time to provide for the direct appointment of an attorney;

the judge may make written request to the state public defender to provide a qualified attorney for the defense of the indigent person.

(b) The judge shall attach to the written request a copy of the affidavit or indictment, and state in the request the amount of the applicable minimum fee to be paid for the legal services of defense counsel in the case, subject to:

- (1) any additional amount reasonable under all the circumstances of the case, to be determined and approved by the judge upon the final determination of the case; and
- (2) reasonable partial allowances as may be approved and ordered by the judge pending final determination.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-2-2**

##### **Appointment**

Sec. 2. Upon receiving a written request under section 1 of this chapter, the state public defender shall:

- (1) accept appointment himself or herself;
- (2) appoint any of the state public defender's deputies; or
- (3) appoint any practicing attorney:
  - (A) admitted to the practice of law in Indiana; and
  - (B) who is competent to practice law in criminal cases;

subject to the concurring appointment, of record, by the requesting judge.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-2-3**

##### **Schedule of fees**

Sec. 3. (a) The state public defender shall prepare and maintain a schedule of minimum attorney's fees for all general classifications of criminal trials, and proceedings on plea of guilty, subject to the approval of the supreme court. The schedule shall be furnished upon

request to all criminal courts. A fee approved by any court for the services of:

- (1) the state public defender;
- (2) the state public defender's deputy; or
- (3) any attorney appointed by the state public defender and the judge under a request made to the state public defender;

may not be less than the approved minimum fee provided in the schedule.

(b) In cases where there has been a change of venue, the presiding judge may not approve a fee for a public defender from the office of the state public defender that exceeds one hundred twenty-five percent (125%) of the minimum fee schedule established under this chapter.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-2-4**

##### **Fees; payment**

Sec. 4. All fees for services rendered by the state public defender or any of the state public defender's deputies under this chapter shall be paid directly to the state treasurer, to be expended for any necessary expenses of the office of the state public defender, including salaries of the necessary deputies, in addition to the state general funds otherwise appropriated by the general assembly for the payment of the expenses.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-2-5**

##### **Order for payment**

Sec. 5. The judge of a court having criminal jurisdiction shall make all orders necessary to mandate payment of fees approved by the presiding judge for payment for legal services rendered for indigent defendants in any cause in:

- (1) the court; or
- (2) another court following change of venue from the court;

whether or not the legal services are arranged under this chapter or by direct appointment of counsel in the first instance by the judge.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-2-6**

##### **Public defender investigators**

Sec. 6. (a) A public defender may use a public defender investigator who is qualified under subsection (b) to assist the public defender in preparing for the criminal defense of indigent persons.

(b) To practice as a public defender investigator, an individual must:

- (1) be at least twenty-one (21) years of age; and
- (2) not have a conviction for a crime that has a direct bearing on the individual's ability to competently perform the duties of a public defender investigator.

(c) A public defender investigator may not perform any duties for

the public defender that constitute the unauthorized practice of law.  
*As added by P.L.98-2004, SEC.19.*

### **IC 33-40-3**

#### **Chapter 3. Supplemental Funding for Public Defender Services**

##### **IC 33-40-3-1**

###### **Supplemental public defender services fund; establishment**

Sec. 1. A supplemental public defender services fund is established in each county. The fund consists of amounts deposited under:

- (1) section 9 of this chapter; and
- (2) IC 35-33-8-3.3.

*As added by P.L.98-2004, SEC.19. Amended by P.L.173-2006, SEC.41.*

##### **IC 33-40-3-2**

###### **Appropriation**

Sec. 2. The fiscal body of the county shall appropriate money from the fund to supplement and provide court appointed legal services to qualified defendants.

*As added by P.L.98-2004, SEC.19.*

##### **IC 33-40-3-3**

###### **Use of fund**

Sec. 3. The supplemental public defender services fund may be used only to supplement the provision for court appointed legal services and may not be used to replace other funding of court appointed legal services.

*As added by P.L.98-2004, SEC.19.*

##### **IC 33-40-3-4**

###### **Reversion of money in fund**

Sec. 4. Any money remaining in the fund at the end of the calendar year does not revert to any other fund but continues in the supplemental public defender services fund.

*As added by P.L.98-2004, SEC.19.*

##### **IC 33-40-3-5**

###### **Multiple court appointed legal service programs**

Sec. 5. A county may not have more than one (1) program providing court appointed legal services in the county, unless the fiscal body of the county agrees to allow additional court appointed legal services programs in the county.

*As added by P.L.98-2004, SEC.19.*

##### **IC 33-40-3-6**

###### **Payment of costs by person or parent of delinquent child; maximum costs**

Sec. 6. (a) If at any stage of a prosecution for a felony or a misdemeanor the court makes a finding of ability to pay the costs of representation under section 7 of this chapter, the court shall require

payment by the person or the person's parent, if the person is a child alleged to be a delinquent child, of the following costs in addition to other costs assessed against the person:

(1) Reasonable attorney's fees if an attorney has been appointed for the person by the court.

(2) Costs incurred by the county as a result of court appointed legal services rendered to the person.

(b) The clerk of the court shall deposit costs collected under this section into the supplemental public defender services fund established under section 1 of this chapter.

(c) A person ordered to pay any part of the costs of representation under subsection (a) has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and under Indiana law.

(d) The sum of:

(1) the fee collected under IC 35-33-7-6;

(2) any amount assessed by the court under this section; and

(3) any amount ordered to be paid under IC 33-37-2-3;

may not exceed the cost of defense services rendered to the person.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-3-7**

##### **Determination of ordering payment of costs**

Sec. 7. (a) If a defendant or a child alleged to be a delinquent child is receiving publicly paid representation, the court shall consider:

(1) the person's independently held assets and assets available to the spouse of the person or the person's parent if the person is unemancipated;

(2) the person's income;

(3) the person's liabilities; and

(4) the extent of the burden that payment of costs assessed under section 6 of this chapter would impose on the person and the dependents of the person.

(b) If, after considering the factors described in subsection (a), the court determines that the person is able to pay the costs of representation, the court shall enter a finding that the person is able to pay those additional costs.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-3-8**

##### **Order for costs as a civil judgment; relief from payment**

Sec. 8. An order for costs assessed under section 6 of this chapter is a civil judgment subject to the exemptions allowed debtors under IC 34-55-10-2. At any time after entry of the order, the defendant may petition the court that has entered the order for relief from payment. The court may release the defendant from payment of all or a part of the payment required by the order if the court finds that payment would impose a hardship upon the defendant or dependents of the defendant.

*As added by P.L.98-2004, SEC.19.*

**IC 33-40-3-9****Collection and deposit of fees**

Sec. 9. Fees assessed under section 6 of this chapter shall be collected by the program providing court appointed legal services in the county. These fees shall be deposited in the supplemental public defender services fund established under section 1 of this chapter.

*As added by P.L.98-2004, SEC.19.*

**IC 33-40-3-10****Establishment of fund in counties where public defender services not provided**

Sec. 10. (a) In a county with a population of more than four hundred thousand (400,000) and less than seven hundred thousand (700,000) in which a county public defender service is not provided, a supplemental public defender services fund must be established in each city for providing funding for a public defender to represent indigent defendants in a city court.

(b) Sections 2 through 9 of this chapter apply to the locally established supplemental public defender services fund established under subsection (a). However, funds otherwise required to be delivered to the county fiscal officer for maintaining a supplemental public defender services fund under this chapter shall be deposited with the local fiscal officer.

*As added by P.L.98-2004, SEC.19.*

## **IC 33-40-4**

### **Chapter 4. Public Defender Council**

#### **IC 33-40-4-1**

##### **"Council" defined**

Sec. 1. As used in this chapter, "council" refers to the public defender council of Indiana established by section 2 of this chapter.  
*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-4-2**

##### **Establishment**

Sec. 2. (a) There is established a public defender council of Indiana.

(b) The council's membership consists of all:

- (1) public defenders;
- (2) contractual pauper counsel; and
- (3) other court appointed attorneys regularly appointed to represent indigent defendants.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-4-3**

##### **Board of directors; members**

Sec. 3. The activities of the council shall be directed by an eleven (11) member board of directors, ten (10) of whom shall be elected by the entire membership of the council, and the state public defender.  
*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-4-4**

##### **Executive director; staff**

Sec. 4. The council may employ an executive director, staff, and clerical personnel as necessary to carry out the council's purposes.  
*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-4-5**

##### **Duties**

Sec. 5. The council shall:

- (1) assist in the coordination of the duties of the attorneys engaged in the defense of indigents at public expense;
- (2) prepare manuals of procedure;
- (3) assist in the preparation of trial briefs, forms, and instructions;
- (4) conduct research and studies of interest or value to all such attorneys; and
- (5) maintain liaison contact with study commissions, organizations, and agencies of all branches of local, state, and federal government that will benefit criminal defense as part of the fair administration of justice in Indiana.

*As added by P.L.98-2004, SEC.19.*

## **IC 33-40-5**

### **Chapter 5. Public Defender Commission**

#### **IC 33-40-5-1**

##### **"Commission" defined**

Sec. 1. As used in this chapter, "commission" refers to the Indiana public defender commission established by section 2 of this chapter. *As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-5-2**

##### **Establishment; composition**

Sec. 2. (a) The Indiana public defender commission is established.

(b) The commission is composed of the following eleven (11) members, none of whom may be a law enforcement officer or a court employee:

(1) Three (3) members appointed by the governor, with not more than two (2) of these individuals belonging to the same political party.

(2) Three (3) members appointed by the chief justice of the supreme court, with not more than two (2) of these individuals belonging to the same political party.

(3) One (1) member appointed by the board of trustees of the Indiana criminal justice institute, who is an attorney admitted to practice law in Indiana.

(4) Two (2) members of the house of representatives to be appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be from the same political party.

(5) Two (2) members of the senate, to be appointed by the president pro tempore of the senate. The members appointed under this subdivision may not be from the same political party.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-5-3**

##### **Chairperson; term of office; vacancies; reimbursement of expenses; salary; meetings**

Sec. 3. (a) The members of the commission shall designate one (1) member of the commission as chairperson.

(b) The term of office of each member of the commission is four (4) years. A vacancy occurring among the members of the commission before the expiration of a term shall be filled in the same manner as the original appointment. An appointment to fill a vacancy occurring before the expiration of a term is for the remainder of the unexpired term.

(c) Each member of the commission who is a state employee is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(d) A member of the commission who is not a state employee is

entitled to:

- (1) the minimum salary per diem provided by IC 4-10-11-2.1(b); and
- (2) reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(e) The commission shall meet at least quarterly and at times called by the chairperson or at the request of three (3) commission members.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-5-4**

##### **Duties**

Sec. 4. The commission shall do the following:

(1) Make recommendations to the supreme court concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following:

- (A) Determining indigency and eligibility for legal representation.
- (B) Selection and qualifications of attorneys to represent indigent defendants at public expense.
- (C) Determining conflicts of interest.
- (D) Investigative, clerical, and other support services necessary to provide adequate legal representation.

(2) Adopt guidelines and standards for indigent defense services under which the counties will be eligible for reimbursement under IC 33-40-6, including the following:

- (A) Determining indigency and the eligibility for legal representation.
- (B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal representation under IC 33-40-3.
- (C) The use and expenditure of funds in the county supplemental public defender services fund established under IC 33-40-3-1.
- (D) Qualifications of attorneys to represent indigent defendants at public expense.
- (E) Compensation rates for salaried, contractual, and assigned counsel.
- (F) Minimum and maximum caseloads of public defender offices and contract attorneys.

(3) Make recommendations concerning the delivery of indigent defense services in Indiana.

(4) Make an annual report to the governor, the general assembly, and the supreme court on the operation of the public defense fund.

The report to the general assembly under subdivision (4) must be in

an electronic format under IC 5-14-6.  
*As added by P.L.98-2004, SEC.19.*

**IC 33-40-5-5**

**Staff support**

Sec. 5. The division of state court administration of the supreme court shall provide general staff support to the commission. The division of state court administration may enter into contracts for any additional staff support that the division determines is necessary to implement this section.

*As added by P.L.98-2004, SEC.19.*

## **IC 33-40-6**

### **Chapter 6. Public Defense Fund**

#### **IC 33-40-6-1**

##### **Purpose; administration**

Sec. 1. The public defense fund is established to receive court costs or other revenues for county reimbursement and administrative expenses. The fund shall be administered by the division of state court administration of the supreme court.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-6-2**

##### **Investment of funds**

Sec. 2. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-6-3**

##### **Reversion of money to state general fund**

Sec. 3. Money in the fund at the end of a fiscal year does not revert to the state general fund.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-6-4**

##### **Certified request for reimbursement for indigent defense services**

Sec. 4. (a) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to fifty percent (50%) of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under IC 35-50-2-9.

(b) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to forty percent (40%) of the county's expenditures for indigent defense services provided in all noncapital cases except misdemeanors.

(c) A request under this section from a county described in IC 33-40-7-1(3) may be limited to expenditures for indigent defense services provided by a particular division of a court.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-6-5**

##### **Amount of reimbursement for indigent defense services; disbursement**

Sec. 5. (a) Except as provided under section 6 of this chapter, upon certification by a county auditor and a determination by the public defender commission that the request is in compliance with the guidelines and standards set by the commission, the commission shall quarterly authorize an amount of reimbursement due the county:

(1) that is equal to fifty percent (50%) of the county's certified expenditures for indigent defense services provided for a defendant against whom the death sentence is sought under IC 35-50-2-9; and

(2) that is equal to forty percent (40%) of the county's certified expenditures for defense services provided in noncapital cases except misdemeanors.

The division of state court administration shall then certify to the auditor of state the amount of reimbursement owed to a county under this chapter.

(b) Upon receiving certification from the division of state court administration, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of the amount certified.

*As added by P.L.98-2004, SEC.19.*

### **IC 33-40-6-6**

#### **Certified claims in capital cases given priority**

Sec. 6. The commission shall give priority to certified claims for reimbursement in capital cases. If the balance in the public defense fund is not adequate to fully reimburse all certified claims in noncapital cases, the commission shall prorate reimbursement of certified claims in noncapital cases.

*As added by P.L.98-2004, SEC.19. Amended by P.L.85-2004, SEC.29.*

## **IC 33-40-7**

### **Chapter 7. County Public Defender Boards**

#### **IC 33-40-7-1**

##### **Applicability of chapter**

Sec. 1. This chapter does not apply to a county that:

- (1) contains a consolidated city;
- (2) has a population of:
  - (A) more than three hundred thousand (300,000) but less than four hundred thousand (400,000);
  - (B) more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000); or
  - (C) more than one hundred seventy-five thousand (175,000) but less than one hundred eighty-five thousand (185,000); or
- (3) has a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), except as provided in sections 5 and 11 of this chapter.

*As added by P.L.98-2004, SEC.19. Amended by P.L.13-2013, SEC.82.*

#### **IC 33-40-7-2**

##### **"Board" defined**

Sec. 2. As used in this chapter, "board" refers to a board established in an ordinance under section 3 of this chapter.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-7-3**

##### **Establishment of board; members; terms; chairperson; meetings; termination**

Sec. 3. (a) A county executive may adopt an ordinance establishing a county public defender board consisting of three (3) members. The county executive shall appoint one (1) member. The judges who exercise felony or juvenile jurisdiction in the county shall appoint by majority vote the other two (2) members.

(b) The members appointed by the judges may not be from the same political party. The members must be persons who have demonstrated an interest in high quality legal representation for indigent persons. However, a member may not be a city, town, or county attorney, a law enforcement officer, a judge, or a court employee.

(c) Each member of the board serves a three (3) year term beginning with the date of the member's appointment. A member appointed to fill a vacancy holds office for the remainder of the previous member's term. If a successor has not been appointed by the end of a member's three (3) year term, the member continues in office until the member's successor takes office.

(d) The members shall, by a majority vote, elect one (1) member to serve as chairperson.

(e) Meetings shall be held at least quarterly and may be held at other times during the year at the call of the:

- (1) chairperson; or
- (2) other two (2) members.

(f) A county executive may terminate the board by giving at least ninety (90) days written notice to the judges described in subsection (a).

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-7-4**

##### **Reimbursement for expenses**

Sec. 4. A member is entitled to reimbursement from the county for traveling expenses and other expenses actually incurred in connection with the member's duties to the same extent as is provided to a state employee for traveling expenses and other expenses under the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-7-5**

##### **Comprehensive plan**

Sec. 5. (a) The board shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal defense services to indigent persons:

- (1) Establishing a county public defender's office.
- (2) Contracting with an attorney, a group of attorneys, or a private organization.
- (3) Using an assigned counsel system of panel attorneys for case by case appointments under section 9 of this chapter.
- (4) In a county described in section 1(3) of this chapter, establishing a public defender's office for the criminal division of the superior court.

(b) The plan prepared under subsection (a) shall be submitted to the Indiana public defender commission.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-7-6**

##### **Duties of board; term, removal, and qualifications of county public defender**

Sec. 6. (a) If a county public defender's office is established under this chapter, the board shall do the following:

- (1) Recommend to the county fiscal body an annual operating budget for the county public defender's office.
- (2) Appoint a county public defender.
- (3) Submit an annual report to the county executive, the county fiscal body, and the judges described in section 3 of this chapter regarding the operation of the county public defender's office, including information relating to caseloads and expenditures.

(b) A county public defender shall be appointed for a term not to exceed four (4) years and may be reappointed. The county public defender may be removed from office only upon a showing of good cause. An attorney must be admitted to the practice of law in Indiana

for at least two (2) years before the attorney is eligible for appointment as a county public defender.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-7-7**

##### **Duties of county public defender**

Sec. 7. A county public defender shall do the following:

- (1) Maintain an office as approved by the board.
- (2) Hire and supervise staff necessary to perform the services of the office after the staff positions are recommended by the board and approved by the county executive and the fiscal body.
- (3) Keep and maintain records of all cases handled by the office and report at least annually to the board and the Indiana public defender commission concerning the operation of the office, costs, and projected needs.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-7-8**

##### **Contracts to provide legal representation**

Sec. 8. (a) A county public defender may contract with an attorney, a group of attorneys, or a private organization to provide legal representation under this chapter.

(b) The board shall establish the provisions of the contract under this section.

(c) The county fiscal body shall appropriate an amount sufficient to meet the obligations of the contract.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-7-9**

##### **Assigned counsel system**

Sec. 9. The board may establish an assigned counsel system of panel attorneys to provide legal representation under this chapter that shall operate as follows:

- (1) The board shall gather and maintain a list of attorneys qualified to represent indigent defendants.
- (2) Upon the determination by a court that a person is indigent and entitled to legal representation at public expense, the court shall appoint an attorney to provide the representation from the list maintained by the board.
- (3) An attorney appointed to provide representation under this section may request authorization from the judge hearing the case for expenditures for investigative services, expert witnesses, or other services necessary to provide adequate legal representation.
- (4) An attorney appointed to provide representation under this section is entitled to receive compensation and reimbursement for budgeted expenses by submitting a voucher to the court. Upon approval of the voucher by the appropriate judge, the voucher shall be presented to the county auditor who shall process the claim as other claims against county funds are

processed.

(5) An attorney appointed to provide representation under this section shall, upon completion of representation, report to the board information regarding the case disposition.

*As added by P.L.98-2004, SEC.19.*

### **IC 33-40-7-10**

#### **Court appointment of counsel or co-counsel**

Sec. 10. (a) This chapter does not prevent a court from appointing counsel other than counsel provided for under the board's plan for providing defense services to an indigent person when the interests of justice require. A court may also appoint counsel to assist counsel provided for under the board's plan as co-counsel when the interests of justice require. Expenditures by a county for defense services not provided under the county public defender board's plan are not subject to reimbursement from the public defense fund under IC 33-40-6.

(b) A judge of a court having criminal jurisdiction may make a written request to the state public defender to provide a qualified attorney for the defense of a person charged in the court with a criminal offense and eligible for representation at public expense if the judge determines:

- (1) that an attorney provided under the county public defender board's plan is not qualified or available to represent the person;
- or
- (2) that in the interests of justice an attorney other than the attorney provided for by the county defender board's plan should be appointed.

The judge shall attach to the request a copy of the information or indictment. Expenditures for representation under this subsection shall be paid by the county according to a fee schedule approved by the commission. These expenditures are eligible for reimbursement from the public defense fund.

*As added by P.L.98-2004, SEC.19.*

### **IC 33-40-7-11**

#### **Expenditures; reimbursement**

Sec. 11. (a) A county public defender board shall submit a written request for reimbursement to the county auditor. The request must set forth the total of the county's expenditures for indigent defense services to the county auditor and may be limited in a county described in section 1(3) of this chapter to expenditures for indigent defense services provided by a particular division of a court. The county auditor shall review the request and certify the total of the county's expenditures for indigent defense services to the Indiana public defender commission.

(b) Upon certification by the Indiana public defender commission that the county's indigent defense services meet the commission's standards, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of a sum equal to forty percent

(40%) of the county's certified expenditures for indigent defense services provided in noncapital cases except misdemeanors.

(c) If a county's indigent defense services fail to meet the standards adopted by the Indiana public defender commission, the public defender commission shall notify the county public defender board and the county fiscal body of the failure to comply with the Indiana public defender commission's standards. Unless the county public defender board corrects the deficiencies to comply with the standards not more than ninety (90) days after the date of the notice, the county's eligibility for reimbursement from the public defense fund terminates at the close of that fiscal year.

*As added by P.L.98-2004, SEC.19.*

### **IC 33-40-7-12**

#### **Conflict of interest**

Sec. 12. A county public defender, a contract attorney, or counsel appointed by the court to provide legal defense services to indigent persons may not be a partner or an employee at the same law firm that employs the county's prosecuting attorney or a deputy prosecuting attorney in a private capacity.

*As added by P.L.98-2004, SEC.19.*

## **IC 33-40-8**

### **Chapter 8. Miscellaneous Legal Services for Indigents in Criminal Actions**

#### **IC 33-40-8-1**

##### **Contracts**

Sec. 1. The judge of any court having criminal jurisdiction, except in those counties with a population of at least four hundred thousand (400,000), may contract with any attorney or group of attorneys admitted to practice law in Indiana to provide legal counsel for all or some of the poor persons coming before the court charged with the commission of a crime and not having sufficient means to employ an attorney to defend themselves.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-8-2**

##### **Fees**

Sec. 2. A judge shall establish the fee to be paid to an attorney or attorneys for providing service to poor people.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-8-3**

##### **Contracts; duration**

Sec. 3. A contract entered into under section 1 of this chapter may be from year to year or for any length of time determined by the judge.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-8-4**

##### **Appropriations; fees**

Sec. 4. The county council of every county where the judge of any court having criminal jurisdiction has contracted with an attorney for legal services to the poor shall appropriate an amount sufficient to meet the contract obligations of a court or courts for services to the poor.

*As added by P.L.98-2004, SEC.19.*

#### **IC 33-40-8-5**

##### **Transcription of notes of evidence**

Sec. 5. (a) Subject to subsection (b), if an indigent person:

(1) desires to appeal to the supreme court or the court of appeals the decision of a trial court in a criminal case; and

(2) does not have sufficient means to procure the typed or printed manuscript or transcript of the evidence taken by the court reporter;

the court shall direct the court reporter to transcribe the notes of evidence into a typed or printed manuscript or transcript as soon as practicable and deliver the manuscript or transcript to the indigent person.

(b) Notwithstanding subsection (a):

(1) the court must be satisfied that the indigent person lacks sufficient means to pay the court reporter for making the manuscript or transcript of evidence; and

(2) the court reporter may charge the compensation allowed by law in cases for making and furnishing a manuscript or transcript. The reporter shall be paid by the court from the proper county treasury.

*As added by P.L.98-2004, SEC.19. Amended by P.L.65-2004, SEC.20.*