

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.