



Office of Court Services

Vicki Davis, Interim Executive Director • 317-232-1313 • courts.in.gov

To: All trial court judicial officers and Circuit Court Clerks
From: Jeffrey S. Wiese, Deputy Director of Legal Support and Statistics
Date: June 19, 2024

Implementation of the amended Supplemental Public Defense fee, annual report requirements, and reminders on Public Defender fee statuses

Implementation of the Amended Supplemental Public Defense Fees:

Effective July 1, 2024, the public defender fees outlined in Ind. Code § 35-33-7-6 increase to \$200 for felony actions and \$100 for misdemeanor actions if the person is found by the court to be able to pay part of the cost of representation. These fees are split between the county supplemental public defense fund and the State. The State portion goes to the State Comptroller for the public defense fund. IOCT has two new fee options (Supplemental Public Defender Fee (I.C. 35-33-7-6) – Felony and Supplemental Public Defender Fee (I.C. 35-33-7-6) – Misdemeanor) to assist clerks with adding these assessed fees to a case. A handout is attached to help with the Odyssey steps to assess these fees.

Update Forms and Orders

It is imperative that courts update any forms or orders to ensure that the clerks have sufficient information to know when the court is assessing the fees under Ind. Code § 35-33-7-6 versus other statutes that authorize assessment of fees for public defender costs. If the courts do not designate the statute relied on for assessing the public defender fees, the clerks should consult with the judge, so the fees are accurately assessed in the case.

Annual Report Requirements

Ind. Code § 33-32-2-11 requires circuit court clerks to make an annual report to the Indiana Commission on Court Appointed Attorneys (formerly the Indiana Public Defender Commission) on the public defender fees under Ind. Code § 35-33-7-6. IOCS and IOCT are working on this reporting requirement with the intent to provide this report on behalf of all circuit court clerks.

In working with the Commission on this reporting requirement, IOCS and IOCT will provide other relevant information related to the other public defender fees assessed to aid in providing a more comprehensive report regarding all public defender fees.

Overview of Statutes for Assessing Public Defense Fees:

A summary of procedures for determining indigency and recouping public defense expenditures from defendants is in the Criminal Benchbook sections 34.10.110 through 34.20.550. Also, please review *Spells v. State*, 225 N.E.3d 767 (Ind. 2024).

At Initial Hearing

With a determination of indigency at an initial hearing, the judicial officer assigns counsel to the person. If the court finds that person is able to pay part of the cost of representation, the court **shall** order a fee of \$200 for a felony action and \$100 for a misdemeanor action under Ind. Code § 35-33-7-6 (increase fee amounts effective July 1, 2024). These fees are split between the county supplemental public defense fund established under Ind. Code § 33-40-3-1 and the State Comptroller for the public defense fund established under Ind. Code § 33-40-6-1. This statute does not prohibit it from being imposed at other times during the proceedings. See *Davis v. State*, 843 N.E.2d 65, 68 (Ind. Ct. App. 2006).

At Any Time During Prosecution

If at any stage of a prosecution for a felony or misdemeanor the court makes a finding of ability to pay the costs of representation under the standard of “substantial hardship,” the court **shall** assess reasonable attorney’s fees, or the amount of defense costs incurred by the county under Ind. Code § 33-40-3-6. Section (b) provides that the clerk of the court shall deposit costs collected under this section into the supplemental public defender services fund established under Ind. Code § 33-40-3-1.

Subsection (d) states the sum of the fee collected in Ind. Code § 35-33-7-6 (assessed at the initial hearing), any amount assessed under this statute; and any amount ordered under Ind. Code § 33-37-2-3 (assessed at conviction) must not exceed the costs of public defense services rendered for the defendant.

At Conviction

If the convicted person was represented by a public defender, the county’s cost of defense could be charged to the defendant pursuant to Ind. Code § 33-37-2-3(e). If, after a hearing under subsection (a) or (b), the court determines that a convicted person is able to pay part of the costs of representation, the court **shall** order the person to pay an amount of not more than the cost of the defense services rendered on behalf of the person. The clerk shall deposit the amount paid by a convicted person under this subsection in the county’s supplemental public defender services fund established under Ind. Code § 33-40-3-1.

Also, Ind. Code § 35-33-8-3.2(a)(2) and (b), permits the judicial officer to order reimbursement of public defense expenses from the defendant's cash bond after conviction. Any amount assessed shall be paid to the county Supplemental Public Defender Services Fund established under Ind. Code § 33-40-3-1.

Screenshots displaying the new Supplemental Public Defender Fee Schedules

When you assess fees on a criminal case, you get the list of fees. The screenshot below shows the results paged through to show all the available Supplemental PD fees.

The screenshot shows a window titled "Select Fee Schedules". At the top, there are input fields for "Description" and "Code". Below these are checkboxes for "Show Selected Codes Only" and a "Sort" dropdown menu set to "Description". The main area contains a table with two columns: "Description" and "Code". The table lists 10 items, each with a checkbox and a corresponding code. At the bottom of the window, there are buttons for "Get All Codes", "Select All", and a status indicator "58 Results - Page 5 of 6". Navigation buttons include "<<Back", "Next>>", "Search", "Continue", and "Exit".

Description	Code
1. <input type="checkbox"/> Sheriff Service Fee	SSF
2. <input type="checkbox"/> Special Death Benefit Fee	SDBF
3. <input type="checkbox"/> Stop Payment Fees	SP
4. <input type="checkbox"/> Supplemental Public Defender Fee	SPD
5. <input type="checkbox"/> Supplemental Public Defender Fee (IC 35-33-7-6) - Felony	SPDF
6. <input type="checkbox"/> Supplemental Public Defender Fee (IC 35-33-7-6) - Misd	SPDC
7. <input type="checkbox"/> Unclaimed Funds 2017	UF17CR
8. <input type="checkbox"/> Unclaimed Funds 2018	UF18CR
9. <input type="checkbox"/> Unclaimed Funds 2019	UF19CR
0. <input type="checkbox"/> Unclaimed Funds 2020	UF20CR

You can also type a part of a fee name in the description box to narrow down your search. Here are just the Supplemental PD fees.

This screenshot shows the same "Select Fee Schedules" window, but with "supplemental" entered in the "Description" field. The table now only displays 3 results, all related to Supplemental Public Defender Fees. The status indicator at the bottom shows "3 Results - Page 1 of 1".

Description	Code
1. <input type="checkbox"/> Supplemental Public Defender Fee	SPD
2. <input type="checkbox"/> Supplemental Public Defender Fee (IC 35-33-7-6) - Felony	SPDF
3. <input type="checkbox"/> Supplemental Public Defender Fee (IC 35-33-7-6) - Misd	SPDC

As an example, below is the screenshot showing the assessment of the Supplemental Public Defender Fee (IC 35-33-7-6) – Misd. You will see that Odyssey automatically splits the fee 50/50 between state and county.

Enter Defendant Charges on Case # 48C03-2301-CM-000303

Date: 06/13/2024 Case Due Date: For Party: **Defendant, Davic**

System Distribution Manual Distribution Case Grace Days: 0

Charge Information Auto Assess Edit Detail

Fee Schedule	Charge
Supplemental Public Defender Fee (IC 35-33-7-6) - Mis	100.00
Supplemental Public Defender (IC 35-33-7-6) - Count	50.00
Supplemental Public Defender (IC 35-33-7-6) - State	50.00

Totals 100.00

Comment: User: **Strickland, Gaye Lynn**

Buttons: Save, Exit, Save/Payment

If you assessed both the new Supplemental Public Defender Fee (IC 35-33-7-6) – Misd plus \$75 public defender fees under either IC 33-40-3-6 or IC 33-37-2-3, then your assessed fees would look like the screen below.

Enter Defendant Charges on Case # 48C03-2301-CM-000303

Date: 06/13/2024 Case Due Date: For Party: **Defendant, Davic**

System Distribution Manual Distribution Case Grace Days: 0

Charge Information Auto Assess Edit Detail

Fee Schedule	Charge
Supplemental Public Defender Fee	75.00
Supplemental Public Defender Fee - CR	75.00
Supplemental Public Defender Fee (IC 35-33-7-6) - Mis	100.00
Supplemental Public Defender (IC 35-33-7-6) - Count	50.00
Supplemental Public Defender (IC 35-33-7-6) - State	50.00

Totals 175.00

Comment: User: **Strickland, Gaye Lynn**

Buttons: Save, Exit, Save/Payment