

Mark W. Rutherford, Chairman
Indianapolis

Richard Bray
Martinsville
Bernice Corley
Indianapolis
Hon. Mary Ellen Diekhoff
Bloomington
Representative Ryan Dvorak
South Bend
Hon. Kelsey B. Hanlon
Spencer

309 W Washington Street Suite 501 • Indianapolis, IN 46204



Public Defender Commission

David J. Hensel
Indianapolis
Senator Eric Koch
Bedford
Representative Ryan Lauer
Columbus
Hon. Steven P. Meyer
Lafayette
Senator Gregory G. Taylor
Indianapolis

www.in.gov/publicdefender • ph 317-233-6908

MEMORANDUM

TO: Governor Eric J. Holcomb
Lieutenant Governor Suzanne Crouch
Chief Justice Loretta H. Rush
All Associate Justices of the Indiana Supreme Court
Sen. Rodric Bray, Senate President Pro Tempore
Sen. Timothy Lanane, Senate Minority Leader
Sen. Ryan Mishler, Chair, Senate Appropriations Committee
Sen. Karen Tallian, Ranking Minority Member, Senate Appropriations Committee
Rep. Brian Bosma, Speaker of the House
Rep. Todd Huston, Speaker of the House Designate
Rep. Phil GiaQuinta, House Minority Leader
Rep. Timothy Brown, Chair, House Ways and Means Committee
Rep. Gregory Porter, Ranking Minority Member, House Ways and Means Committee
All Members of the Indiana General Assembly

FROM: Mark W. Rutherford, Chairman

A handwritten signature in black ink, appearing to read "Mark W. Rutherford".

DATE: December 2019

SUBJECT: **2018-2019 Annual Report of the Indiana Public Defender Commission**

The Indiana Public Defender Commission's Annual Report for Fiscal Year 2018-2019 provides an overview of the purpose and use of the Public Defense Fund. For the prior 29 years, the Commission, in cooperation with the General Assembly and the Indiana Supreme Court, has established and revised its standards for public defense services in both death penalty and non-death penalty cases. The report contains a brief history of the Commission, its responsibilities, and its reimbursements.

The Commission is authorized by statute to reimburse all 92 counties for 50% of their defense expenditures in capital (death penalty) cases. The Public Defense Fund's participating counties may also receive reimbursement of up to 40% of their defense expenditures in non-capital public felony, juvenile delinquency, and Children in Need of Services and Termination of Parental Rights (CHINS/TPR) cases if the counties comply with the Commission's Standards for defense services. The Commission's standards are always available online at: www.in.gov/publicdefender. This Commission is prohibited via statute for reimbursing misdemeanor expense expenditures.

The Commission is pleased to report that a record 62 counties requested and received reimbursement for their non-capital public defense expenses during the fiscal year - representing over two-thirds of Indiana's population. County non-capital public defense expenses continue to increase. During this time, the State of Indiana, through the Public Defense Fund, returned over \$27.5 million to the counties for these expenses, easing their budget burden. The Commission also authorized over \$481,000 in death penalty reimbursement. Total county public defense expense reimbursement was nearly \$28 million, a new record.

The Commission is grateful that the Public Defense Fund's appropriation was increased in the 2019 Legislative Session to accommodate additional reimbursement obligations. This funding is the only state assistance provided to the counties for their public defense expenditures. In contrast, the state historically contributes over \$70 million for trial judge salaries and benefits and \$31 million for prosecutor salaries and benefits annually. Indiana's 92 counties are directly responsible for the majority of the more than \$98 million in tax dollars spent on public defense in Indiana each year.

Indiana's public defense services continued to be underfunded, especially in the area of misdemeanor public defense. The Commission will seek statutory authority in the upcoming 2020 session of the General Assembly to reimburse misdemeanor expenses. This remains the Commission's top public policy priority.

The Commission looks forward to working with you to continue the progress that has been made to improve the quality of public defense services in Indiana. The goals of the Indiana Public Defender Commission include continued reimbursement to Indiana's counties for the public defense costs upon which they have come to rely while ensuring adequate and responsible public defense services throughout the state.

Thank you for your continued commitment to guarantee the constitutional rights of Indiana's residents. Please do not hesitate to contact us to provide any additional information at any time.



Public Defender Commission

309 West Washington Street
Suite 501
Indianapolis, IN 46204
317.233.6908
www.in.gov/publicdefender

2018-2019 ANNUAL REPORT

Introduction

Long before the United States Supreme Court's historic right to counsel case of Gideon v. Wainwright in 1963, Indiana recognized the right to counsel in the case of Webb v. Baird. In 1854, the Supreme Court of Indiana recognized the right to a publicly paid attorney for persons facing incarceration who could not otherwise afford an attorney. This made Indiana the first state in the Union to recognize such a right.

The burden of providing representation in Indiana has

historically fallen upon each individual county. At the same time, the right to counsel is much more than just a technical requirement—it is the right to have a competent attorney who can protect the rights of each individual citizen to the fullest extent of the law. In order to assist counties with the financial burden of providing quality representation, the Indiana General Assembly created the Indiana Public Defender Commission to provide assistance to counties.

Commission Members

As the law was originally written, the Commission had seven members: three appointed by the Governor; three appointed by the Chief Justice of Indiana; and one appointed by the Board of Trustees of the Indiana Criminal Justice Institute. In P.L. 283-1993, the General

Assembly added four legislators to the Commission, ensuring adequate representation from all branches of the government. The following is a list of the Commission members, and their cities of residence, as of the close of the fiscal year (June, 2019):

Name	City	Appointed by
Mark W. Rutherford, Chairman	Indianapolis	Governor
Richard Bray	Martinsville	Governor
David J. Hensel	Indianapolis	Governor
Hon. Mary Ellen Diekhoff	Bloomington	Chief Justice
Hon. Kelsey B. Hanlon	Spencer	Chief Justice
Hon. Steven P. Meyer	Lafayette	Chief Justice
Larry Landis, Vice Chair	Indianapolis	Criminal Justice Institute
Rep. Ryan Dvorak	South Bend	Speaker of the House
Rep. John Young	Franklin	Speaker of the House
Sen. Eric Koch	Bedford	Senate President Pro Tempore
Sen. Gregory G. Taylor	Indianapolis	Senate President Pro Tempore

Statutory Duties

In response to serious concerns regarding the quality of publicly appointed defense attorneys in death penalty cases, the legislature created the Indiana Public Defender Commission in 1989 by P.L. 284-1989. In 1993, the legislature realized that the funding and quality of representation in non-death penalty cases was also a concern. Accordingly, it amended the Commission's statute in P.L. 283-1993. The Commission is now authorized to reimburse counties for 50% of their public defense services in death penalty cases and 40% in non-death penalty cases, excluding misdemeanors.

These changes resulted in the current version of I.C. 33-40-5-4, where the Commission is mandated to:

1. Make recommendations to the Indiana Supreme Court concerning standards for public defense services provided for defendants against whom the State has sought the death sentence under IC 35-50-2-9, including the following subjects:

- a. Determining indigency and eligibility for legal representation.
- b. Selection and qualifications of attorneys to represent public defendants at public expense.
- c. Determining conflicts of interest.
- d. Investigative, clerical, and other support services necessary to provide adequate legal representation.

3. Make recommendations concerning the delivery of public defense services in Indiana.

2. Adopt guidelines and standards for public defense services under which counties are 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 defendants 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 by IC 33-40-3-1.
- d. Qualifications of attorneys to represent public defendants at public expense.
- e. Minimum and maximum caseloads of public defender offices and contract attorneys.

4. Make an annual report to the Governor, the General Assembly, and the Supreme Court on the operation of the Public Defense Fund.

Commission Participation and Reimburse

County	Capital	Non-Capital	Total Reimbursement	Non-Capital Participation
ADAMS	\$ 24,094.00	\$ 1,535,042.08	\$ 1,559,136.08	2000-Present
ALLEN	\$ 334,959.64	\$ 18,799,453.87	\$ 19,134,413.51	2000-Present
BENTON		\$ 358,284.96	\$ 358,284.96	1998-Present
BLACKFORD		\$ 788,754.11	\$ 788,754.11	2000-Present
BOONE	\$ 421,742.38			
BROWN		\$ 252,956.11	\$ 252,956.11	2012-2017, 2019-Present
CARROLL	\$ 43,091.00	\$ 771,790.44	\$ 814,881.44	2001-Present
CASS		\$ 1,087,969.03	\$ 1,087,969.03	2013-Present
CLARK	\$ 459,989.00	\$ 4,566,973.09	\$ 5,026,962.09	1995-Present
CLINTON		\$ 118,561.42	\$ 118,561.42	2018-Present
DAVISS	\$ 6,150.00			
DECATUR		\$ 923,407.70	\$ 923,407.70	1999-Present
DEKALB		\$ 698,006.22	\$ 698,006.22	2016-Present
DELAWARE	\$ 307,403.00	\$ 4,020,694.19	\$ 4,328,097.19	2011-Present
ELKHART	\$ 99,831.80			
FAYETTE		\$ 1,968,964.97	\$ 1,968,964.97	1999-Present
FLOYD	\$ 404,055.00	\$ 4,310,945.30	\$ 4,715,000.30	1997-Present
FOUNTAIN	\$ 59,553.00	\$ 601,843.46	\$ 661,396.46	1999-Present
FULTON	\$ 167,002.00	\$ 1,206,644.22	\$ 1,373,646.22	1998-Present
GIBSON	\$ 40,865.05			
GRANT		\$ 4,790,559.36	\$ 4,790,559.36	2003-Present
GREENE	\$ 28,436.00	\$ 2,093,575.67	\$ 2,122,011.67	2000-Present
HAMILTON	\$ 230,965.24			
HANCOCK	\$ 2,064.00	\$ 2,631,914.23	\$ 2,633,978.23	1999-Present
HARRISON	\$ 823,472.72			
HENDRICKS		\$ 905,056.22	\$ 905,056.22	2017-Present
HENRY	\$ 76,312.00	\$ 773,998.32	\$ 850,310.32	1999-2008
HOWARD		\$ 6,145,860.65	\$ 6,145,860.65	2004-Present
JACKSON		\$ 952,598.68	\$ 952,598.68	2015-Present
JASPER	\$ 47,241.00	\$ 1,246,930.71	\$ 1,294,171.71	1999-Present
JAY		\$ 1,543,383.11	\$ 1,543,383.11	2000-Present
JEFFERSON	\$ 87,054.00	\$ 553,698.33	\$ 640,752.33	2017-Present
JENNINGS		\$ 1,193,841.37	\$ 1,193,841.37	1999-Present
JOHNSON	\$ 217,557.21			
KNOX	\$ 54,276.00	\$ 3,347,090.45	\$ 3,401,366.45	1999-Present
KOSCIUSKO		\$ 2,765,378.74	\$ 2,765,378.74	2000-Present
LaGRANGE		\$ 565,481.47	\$ 565,481.47	2010-Present
LAKE	\$ 2,142,553.00	\$ 24,382,610.72	\$ 26,525,163.72	1999-Present
LaPORTE	\$ 59,311.00	\$ 4,083,313.88	\$ 4,142,624.88	1995-Present

No Commission Reimbursement: Bartholomew, Clay, Crawford, Dearborn, Dubois, Franklin, Huntington, Marshall, Newton, Starke, Tipton, Wayne, Wells

Reimbursement History by County

County	Capital	Non-Capital	Total Reimbursement	Non-Capital Participation
LAWRENCE		\$ 2,158,040.94	\$ 2,158,040.94	2011-Present
MADISON	\$ 559,893.00	\$ 11,397,888.30	\$ 11,957,781.30	1998-Present
MARION	\$ 4,152,402.00	\$ 94,343,514.40	\$ 98,495,916.40	1995-Present
MARTIN		\$ 704,110.57	\$ 704,110.57	1999-Present
MIAMI	\$ 17,919.00	\$ 913,060.44	\$ 930,979.44	1995-2007,2018-Present
MONROE		\$ 8,758,373.24	\$ 8,758,373.24	2000-Present
MONTGOMERY		\$ 1,080,445.33	\$ 1,080,445.33	1995-2013
MORGAN	\$ 511,283.37			
NOBLE		\$ 2,593,180.35	\$ 2,593,180.35	2001-Present
OHIO		\$ 379,023.02	\$ 379,023.02	1999-Present 1995-Present
ORANGE		\$ 1,509,548.51	\$ 1,509,548.51	1995-Present
OWEN		\$ 388,145.63	\$ 388,145.63	2015-Present
PARKE	\$ 405,588.00	\$ 772,296.11	\$ 1,177,884.11	1996-Present
PERRY		\$ 1,132,360.45	\$ 1,132,360.45	2004-Present
PIKE	\$ 16,891.00	\$ 1,154,743.21	\$ 1,171,634.21	2001-Present
PORTER	\$ 83,653.84			
POSEY	\$ 75,447.10			
PULASKI		\$ 1,090,703.39	\$ 1,090,703.39	1999-Present
PUTNAM	\$ 128,306.40			
RIPLEY		\$ 400,782.37	\$ 400,782.37	2014-Present
RANDOLPH	\$ 25,308.56			
RUSH		\$ 1,249,600.70	\$ 1,249,600.70	2001-Present
ST. JOSEPH	\$ 85,692.00	\$ 8,920,508.31	\$ 9,006,200.31	2007-Present
SCOTT		\$ 677,456.89	\$ 677,456.89	2000-2009, 2018-Present
SHELBY	\$ 40,348.00	\$ 2,396,858.90	\$ 2,437,206.90	1999-Present
SPENCER	\$ 348,321.00	\$ 883,007.68	\$ 1,231,328.68	1999-Present
STEUBEN	\$ 117,936.00	\$ 1,621,425.20	\$ 1,739,361.20	2001-Present
SULLIVAN	\$ 70,576.00	\$ 697,048.52	\$ 767,624.52	1999-Present
SWITZERLAND		\$ 929,521.60	\$ 929,521.60	1999-Present
TIPPECANOE	\$ 85,663.00	\$ 9,382,491.19	\$ 9,468,154.19	2004-Present
UNION		\$ 346,887.53	\$ 346,887.53	1999-Present
VANDERBURGH	\$ 852,202.00	\$ 13,154,011.34	\$ 14,006,213.34	2000-Present
VERMILLION		\$ 849,451.44	\$ 849,451.44	1997-Present
VIGO	\$ 153,768.00	\$ 9,671,188.68	\$ 9,824,956.68	1999-Present
WABASH		\$ 1,071,061.89	\$ 1,071,061.89	2007-Present
WARREN		\$ 249,705.77	\$ 249,705.77	1996-Present
WARRICK	\$ 481,596.53			
WASHINGTON	\$ 3,878.00	\$ 2,202,073.95	\$ 2,205,951.95	2000-Present
WHITE		\$ 32,777.70	\$ 32,777.70	2001-2002
WHITLEY		\$ 213,243.89	\$ 213,243.89	1999-2008

Task Force on Public Defense

A critical evaluation of indigent defense services in Indiana by the 6th Amendment Center led to the creation of the Indiana Task Force on Public Defense in August 2017. The Task Force had members from all three branches of Indiana State Government and members from key interest groups. The Task Force studied Indiana's system for over one year and made recommendations for improvements in August 2018. In January 2019, the Commission then adopted many of the recommendations and is in the process of pursuing reforms.

Findings regarding Indiana's Public Defense Services:

- ◇ Uneven access to counsel
- ◇ Excessive misdemeanor caseloads
- ◇ No uniform system for measuring quality of service
- ◇ Inadequate training requirements
- ◇ Inadequate compensation
- ◇ The presence of conflicts of interest
- ◇ Inadequate numbers of investigators & social workers
- ◇ A need for greater service in child welfare
- ◇ Inadequate representation at initial hearings
- ◇ Inadequate Commission staffing levels
- ◇ An uneven application of standards

The Task Force made the following recommendations for reforms:

- ▶ Immediate System-Wide Priorities:
 - Misdemeanor Reimbursement
 - Centralized State Appellate Office
 - Statutory Authorization for Multi-County PD Offices (SEA 488-2019)
- ▶ State-Level Priorities:
 - Greater state funding, and technical support should be provided in parental representation in CHINS/TPR cases and juvenile delinquency cases (HEA 1001 - 2019)
- ▶ County-Level Priorities:
 - County public defender boards should have no more than one judicial appointment (SEA 488-2019)
 - Defense plan should include appointment from the private bar
- ▶ Commission Structure Priorities:
 - Authority to administer discretionary grants
 - Regularly update its attorney workload standards (ongoing staff work)
 - Tracking data on indigence appointments (ongoing staff work)
 - The Commission needs additional staff to develop new standards, coordinate with counties and/or regions, and implement data collection and quality controls (new position established)
 - The Commission should explore remedies to help counties with funding shortages

Funding and Reimbursement History

Fiscal Year	# of Counties Eligible for Reimbursement	Annual Appropriation to PDCOM Fund	Reimbursement Paid in Capital Cases	Reimbursement Paid in Non-Capital Cases	Total Reimbursement Paid	Loss due to prorated reimbursement	% of reimbursement received
1989-90		\$ 650,000			\$ -		
1990-91		\$ 650,000	\$ 58,550		\$ 58,550		
1991-92		\$ 650,000	\$ 286,805		\$ 286,805		
1992-93		\$ 650,000	\$ 484,501		\$ 484,501		
1993-94		\$ 650,000	\$ 337,139		\$ 337,139		
1994-95		\$ 650,000	\$ 288,465		\$ 288,465		
1995-96	5	\$ 650,000	\$ 528,641	\$ 668,747	\$ 1,197,388		
1996-97	7	\$ 650,000	\$ 371,046	\$ 628,841	\$ 999,887		
1997-98	9	\$ 3,000,000	\$ 799,450	\$ 1,022,104	\$ 1,821,554		
1998-99	17	\$ 3,000,000	\$ 526,515	\$ 2,188,701	\$ 2,715,216		
1999-00	30	\$ 2,400,000	\$ 378,209	\$ 2,990,954	\$ 3,369,163		
2000-01	38	\$ 2,400,000	\$ 712,054	\$ 3,669,319	\$ 4,381,373		
2001-02	50	\$ 6,000,000	\$ 473,317	\$ 4,869,313	\$ 5,342,630	\$ 2,036,380	28%
2002-03	50	\$ 7,000,000	\$ 413,805	\$ 5,371,364	\$ 5,785,169	\$ 1,619,285	31%
2003-04	52	\$ 7,000,000	\$ 478,222	\$ 4,553,537	\$ 5,031,759	\$ 1,403,053	25%
2004-05	53	\$ 8,000,000	\$ 672,381	\$ 11,026,803	\$ 11,699,184	\$ 771,538	37%
2005-06	53	\$ 9,000,000	\$ 386,288	\$ 5,824,921	\$ 6,211,209	\$ 895,476	36%
2006-07	54	\$ 10,000,000	\$ 844,769	\$ 12,147,454	\$ 12,992,223	\$ 2,674,834	31%
2007-08	53	\$ 14,500,000	\$ 753,772	\$ 14,162,897	\$ 14,916,669	\$ 825,367	38%
2008-09	48	\$ 15,250,000	\$ 742,251	\$ 14,325,105	\$ 15,067,356	\$ 1,262,700	37%
2009-10	50	\$ 18,250,000	\$ 618,252	\$ 15,373,384	\$ 15,991,636		40%
2010-11	52	\$ 18,250,000	\$ 370,709	\$ 15,996,714	\$ 16,367,423		40%
2011-12	53	\$ 20,250,000	\$ 532,706	\$ 16,685,482	\$ 17,218,188		40%
2012-13	53	\$ 20,250,000	\$ 381,459	\$ 17,546,818	\$ 17,928,277		40%
2013-14	54	\$ 22,250,000	\$ 421,935	\$ 18,693,834	\$ 19,115,769		40%
2014-15	55	\$ 22,250,000	\$ 268,182	\$ 19,923,237	\$ 20,191,418		40%
2015-16	57	\$ 22,257,668	\$ 590,939	\$ 20,695,801	\$ 21,286,740		40%
2016-17	58	\$ 22,250,000	\$ 896,287	\$ 22,435,660	\$ 23,331,946		40%
2017-18	62	\$ 25,750,000	\$ 256,896	\$ 25,006,493	\$ 25,263,389		40%
2018-19	62	\$ 25,750,000	\$ 481,104	\$ 27,502,636	\$ 27,983,740		40%
TOTALS		\$ 310,257,668	\$ 14,354,649	\$ 283,310,120	\$ 297,664,767	\$ 11,488,633	

2019 Capital Reimbursements

Defendant	September 2018 Q2	December 2018 Q3	March 2019 Q4	June 2019 Q1	Total
Dansby	\$ 14,728.44	\$ 20,163.15	\$ 24,223.58	\$ 66,435.29	\$ 125,550.46
Baumgardt	\$ 2,791.36	\$ 21,558.37	\$ 58,958.33	\$ 13,916.42	\$ 97,224.48
Wright	\$ -	\$ -	\$ -	\$ 47,567.39	\$ 47,567.39
Oberhansley	\$ -	\$ 15,338.71	\$ 27,987.72	\$ 26,646.99	\$ 69,973.42
Kubsch	\$ 17,726.10	\$ 18,363.95	\$ 8,383.48	\$ -	\$ 44,473.53
Stephenson	\$ 78,271.35	\$ 14,700.00	\$ 3,343.00	\$ -	\$ 96,314.35
Total					\$ 481,103.63

Non-Capital Reimbursements

2018-2019

