

Worsening Indiana Lawyer Shortage Leading to Delayed Justice, Unrepresented Clients Languishing in County Jails, Constitutional Rights of Hoosiers Being Violated

“We are in a crisis situation.”

What led to this dire pronouncement? In mid-June, sixty individuals in Vanderburgh County were arrested and a trial court referred them to the public defender, but there were no attorneys available to appoint. Some of the individuals were sitting in jail for weeks without constitutionally required representation.

The problem was not limited to one court. County Chief Public Defender Steve Owens calculated that a second court would run out of available public defenders by late June. And the number of individuals waiting for an attorney in the first court would likely reach nearly one hundred.

Although a partial solution has since been reached by hiring additional part-time contractors, it will only provide a temporary resolution. The Vanderburgh Public Defender Office has already lost four attorneys in 2023—positions that must be replaced— and it also needs to hire at least four more by early 2024. The last time the office advertised a position, few qualified individuals applied over an eight-month period.

The Evansville Courier & Press has produced comprehensive reporting on this matter. (Click [HERE](#) to read Reporter Thomas B Langhorne’s article from July 10, and click [HERE](#) to read his follow-up article, posted on July 20).

Public defense agencies are not the only ones struggling to find attorneys. Indiana prosecuting attorneys have listed openings, only to go months without receiving any qualified applicants. Multiple state agencies have increased attorney salaries to assist in recruitment and retention, which has consequently led to “attorney stealing,” particularly from county public defense programs.

Thus, Indiana has reached an ominous crossroads when it comes to the availability of attorneys. This shortage is especially prevalent in public defense. Admirably, Indiana has been on the forefront of dutiful indigent defense since the Indiana Supreme Court decided *Webb v. Baird* in 1854.¹ In this decision, the court held that indigent criminal defendants in Indiana had a right to counsel provided at the public’s expense. Remarkably, it was not until over 100 years later when *Gideon v. Wainwright* was decided by the U.S. Supreme Court that this approach was recognized at the federal level.²

¹ *Webb v. Baird*, 6 Ind. 13, 18 (1854).

² *Gideon v. Wainwright*, 372 U.S. 335 (1963).

While Indiana has a long tradition of advocating for and legally recognizing the merits of indigent defense, these merits and traditions amount to little if there are too few lawyers to provide counsel to indigent defendants. This issue is not isolated to Indiana alone, but one that touches nearly every state in some fashion. For example, a recent Oregon study found that it only had 31% of the public defenders it needs, and one Oregon county announced that its public defenders would temporarily stop accepting appointments due to attorney shortages.³ Similarly, an American Bar Association study released in early 2022 concluded that New Mexico needs to increase its staff of public defenders from just under 300 attorneys to nearly 900 attorneys to provide adequate representation.⁴ And just this month, the St. Louis Dispatch reported that a public defender office in Missouri was likely closing due to its inability to recruit and retain attorneys.⁵ As the Crossroads of America, Indiana has an opportunity to provide a roadmap for indigent defense that has been woven into our state's rights for nearly 170 years.

I. By the Numbers

There is a significant shortage of lawyers in Indiana compared to the country at large. In 2023, the overall number of attorneys per capita in the workforce across Indiana counties is 34% of the national average. This number has been on the decline, from 46% in 2018 and 36% in 2020.⁶

In any attorney shortage, rural counties are generally hit the hardest. In Indiana, however, the shortage is not limited to rural areas. Except for two of the largest counties in Indiana (Marion and Hamilton), nearly every Indiana county has a very low prevalence of attorneys relative to the national average. The issue to bear in mind is that with an overall shortage of attorneys across the board in Indiana, the practice area of indigent defense is particularly affected. Why?

³ American Bar Association, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, January 2022

(https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lscslaid-or-proj-rept.pdf).

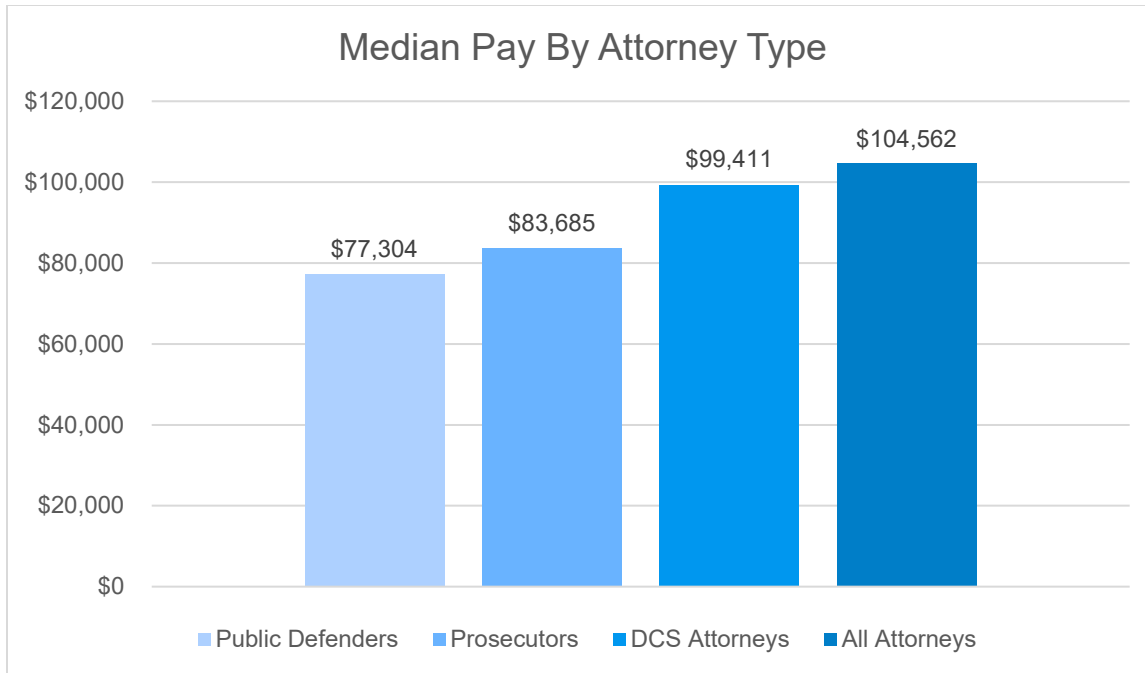
⁴ American Bar Association, *The New Mexico Project: An Analysis of the New Mexico Public Defense System and Attorney Workload Standards*, January 2022

(https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/publications/nm-project/).

⁵ Jack Suntrup, *Public defender's office in poor Missouri Bootheel town on the chopping block*, St. Louis Post Dispatch, July 12, 2023 (https://www.stltoday.com/news/local/government-politics/public-defender-s-office-in-poor-missouri-bootheel-town-on-the-chopping-block/article_ef44309e-2001-11ee-9c10-d731e759ea9a.html).

⁶ All data on lawyer availability in the workforce provided by the Indiana Department of Workforce Development.

II. The Bottom Dollar



Indigent defense has historically been one of the lowest-paid sectors of our criminal justice system. While pay for public defenders in Commission counties have increased in recent years (from a median pay of \$67,750 in 2020, to \$69,896 in 2021, \$74,338 in 2022, and \$77,304 in 2023), their pay still falls well below comparable pay in the private sector. In 2022, the median pay for Indiana lawyers was \$104,562, and the average was \$142,599. While public defenders' salaries have been increasing year over year, they still fall well below their counterparts in private practice. Additionally, these salary statistics for public defenders are only based on the counties that opt-in to the Public Defenders Commission's policies and standards. About 25 Indiana counties don't apply for state reimbursement. As a result, these counties have a wide range of compensation levels for public defenders.

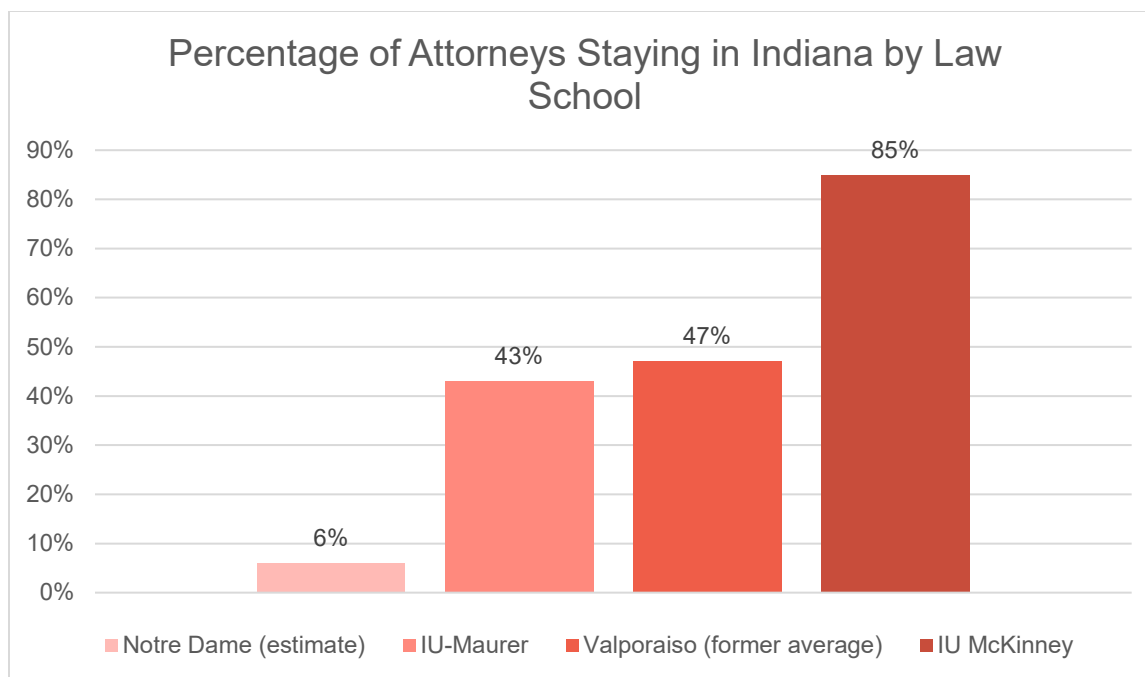
Similarly, too often public defenders are paid less than the other attorneys across the courtroom from them. In a 2022 survey of Commission counties, full-time deputy prosecutors had a median pay of \$83,685.⁷ This number likely increased in 2023. In Child in Need of Services and Termination of Parental Rights cases, public defenders are opposed by trial attorneys from the Department of Child Services (DCS). The relative compensation in these cases is even more unbalanced, after the Indiana executive branch recently completed a comprehensive overhaul of

⁷ This survey was sent to Commission counties and had a majority, but not complete, response rate. Therefore, these results are not exhaustive but are representative of prosecutorial pay in counties that participate in the Commission's reimbursement program. Non-commission county prosecutorial pay may differ.

compensation in 2022. Following this overhaul, DCS attorneys are paid a minimum of \$75,010 and a median of \$99,411 for the less senior category of attorney. More senior DCS attorneys are paid a median of \$112,682, with a pay range reaching up to \$140,433.⁸

Thus, how can we reasonably expect to attract attorneys into a public defense profession when compensation is so low? Perhaps a review of recent Indiana law school graduates would be informative.

III. A Lesson in Law School



The number of attorneys graduating from Indiana law schools has been in a decline. In 2017, 756 students graduated from Indiana law schools. Four years later, that number had fallen to 599.⁹ The closure of Valparaiso University School of Law in 2020 eliminated a source that, as of 2019, had trained nearly 18% of the attorneys practicing in Indiana.¹⁰ It is difficult to precisely quantify the effect of Valparaiso's closing, but it seems likely that it has contributed to the attorney shortage in Indiana; in the final three years of Valparaiso Law School's existence from which statistics are

⁸ Pay medians and ranges for DCS attorneys (and all executive branch positions) is publicly available through the State Personnel Department here: <https://www.in.gov/spd/compensation/>.

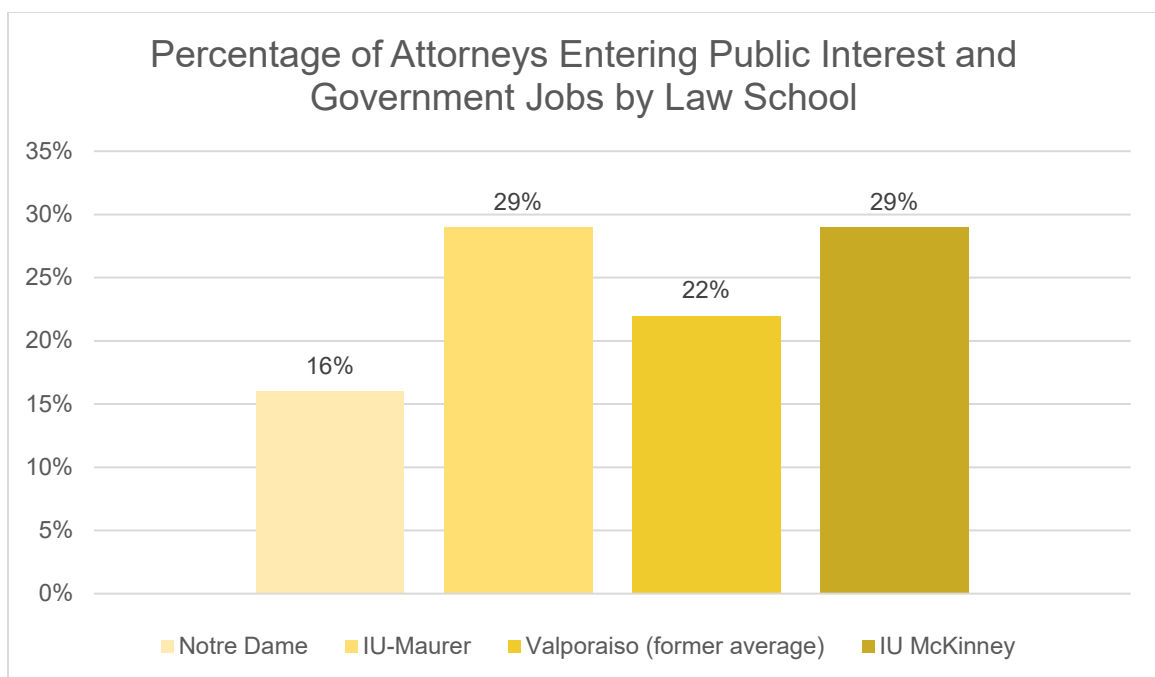
⁹ Information about the number of law graduates provided by the Indiana Department of Workforce Development.

¹⁰ Proportion of the attorney workforce by law school information provided by the Indiana Department of Workforce Development.

available (from 2015 to 2017), graduates were employed within Indiana at a rate of 50%, 52%, and 40%, respectively.¹¹

The three remaining law schools in Indiana—IU-Maurer (Bloomington), IU-McKinney (Indianapolis), and Notre Dame—supply the attorney market in differing ways. Historically, Notre Dame has graduated few attorneys that remain and practice in Indiana. In the same period listed above (2015-2017), at its peak, Notre Dame only had 8% of its graduates remain and practice in Indiana. In contrast, graduates of IU-McKinney stayed in the state at a rate of 87%, 90%, and 85%, respectively. In that same time frame, IU-Maurer had 37%, 41% and 43% of its graduates practicing in Indiana, respectively.

As of 2022, Notre Dame’s percentage of graduates working in Indiana was too low to be in the top three of job placement sites on the required American Bar Association (ABA) disclosures. Conversely, in 2022, IU-McKinney had 85% of its graduates working in Indiana and IU-Maurer had 43% of its graduates practicing in the state.



Clearly, IU-McKinney is the driving institution behind graduates currently practicing in Indiana, but only a portion of its graduates enter public interest law. And while McKinney has historically been the highest producer of Indiana lawyers, Valparaiso law school was historically in second place. With the closing of Valparaiso, and no significant increase in the placement of attorneys in Indiana by existing law schools, more attorneys will have to be recruited from other states to fill the gaps.

¹¹ All data on state placement by individual law school provided by the American Bar Association required disclosures reports.

Yet, the badgering question is—even if these attorneys practice in Indiana, will they accept public defender roles?

The data available suggest Indiana has a long way to go in attracting recent law school graduates into public defense. According to data provided by IU-Mauer, only 19 graduates from IU-Maurer have gone into public defense in Indiana in the last five graduating classes (2019-2023). Eight more students entered public defense outside the state. According to IU-McKinney, only nine graduates entered public defense in Indiana—all in Marion County—from the 2022 class.

ra

IV. Potential Solutions

Being at a crossroads means we must select a direction to travel for the foreseeable future. In some cases, the attorney shortage is a supply and demand problem. If there are fewer attorneys graduating and choosing to practice in Indiana, there are obviously fewer attorneys available who could choose public interest law or public defense as a career option. But attorneys are not a fungible commodity; the level of skill, dedication, education, and vigor required by an attorney isn't replaceable. Ultimately the goal for indigent defense must be recruiting, retaining, and providing a culture in which new attorneys can thrive and do meaningful work. The first way to recruit prospective attorneys is a relatively simple one: money.

Regardless of the enthusiasm a new attorney possesses to do meaningful work such as public defense, there is a threshold to someone being a noble pauper. In some cases, the pay of a public defender would make them eligible to receive a public defender of their own if they were to encounter legal troubles (if one could be found). One does not have to look far to find enthusiastic young attorneys who were passionate about their clients but dropped out of the practice because it was not financially feasible. Many young attorneys are saddled with enormous student debt. In 2020, the ABA found that more than half of all new and young lawyers had more than \$150,000 in student loans.¹² While there are pathways for loan forgiveness, one such forgiveness program only comes after ten years of public service, ten years of making qualifying loan payments, and ten years of living off and providing for a family on a rather paltry salary. Coupled with challenging work and sometimes overwhelming caseloads, it is no surprise that it is daunting if not nearly impossible for new graduates to enter and persevere in public defense.

Therefore, a first and primary solution to recruit and retain attorneys is to pay public defenders more. More money invested in public defense equates to investing in

¹² American Bar Association, *2020 Law School Student Loan Debt Survey Report* at 3 (https://www.americanbar.org/groups/law_students/resources/student-lawyer/personal-financial/law-student-debt-legal-profession-compounding-crisis/).

undervalued but essential structures of society. More money invested in public defense would ensure a better delivery of justice, as mandated by the Constitution. Such investment can come in the form of higher salaries as well as strict pay parity. This pay parity can be measured against other attorneys working in the public interest or government sectors such as prosecutors or DCS. The work of public defenders is no less valuable than the work of these attorneys. The message we must communicate to new attorneys is that public defense work should be an aspiration and not a fallback. Criminal defendants must not be forced to remain incarcerated without due process because they have not been assigned counsel.

Paying public defenders more may seem unlikely, infeasible, and possibly impossible. On the other hand, there are much less palatable options. Within the last three years, public defenders have increasingly refused to accept new cases. In 2019, Wyoming public defenders were only assigned felony cases and no misdemeanor cases until the state could address its staffing crisis.¹³ The New Hampshire Public Defender program, in August 2021, refused to accept new cases due to workloads.¹⁴ In February 2022, the Los Angeles public defender union demanded that its director refuse additional cases.¹⁵ Multiple jurisdictions have similarly responded to courts, “No more!” unless additional funding became available. The ramifications of such a “nuclear option” are obvious as criminal defendants are effectively denied their due process rights, which could lead to legal challenges of their own. The fallout from this option would be widespread and could succinctly dismantle any efficiency and effectiveness of the criminal justice system. This could ultimately lead to civil rights cases in which the initial criminal offense is an ancillary character to the quest for justice provided by the Constitution.

To retain public defenders, there must be a culture in place that makes the work of public defense sustainable. Overwhelming workloads must be addressed. Unless fewer arrests are made, there must be a system in place to handle the number of cases now coming before the courts. This can obviously be done by simply recruiting and retaining public defenders. But this can also be addressed by proper

¹³ Casey Leins, *States Address the Public Defenders Crisis*, U.S. News & World Report, May 22, 2019, <https://www.usnews.com/news/best-states/articles/2019-05-22/states-work-to-address-public-defender-crisis>.

¹⁴ Scott Merrill, *Judge Calls for Solution to Public Defender Shortage*, Eagle Times, Aug. 17, 2021 (https://www.eagletimes.com/news/judge-calls-for-solution-to-public-defender-shortage/article_c60f4297-56cf-55ec-8a0f-f79bc590dc30.html). The New Hampshire Judicial Council was trying to recruit new private attorneys to accept cases but found that low reimbursement rates and the heavy caseloads facing public defends made recruitment difficult. *Id.*

¹⁵ Emily Elena Dugdale, *‘Our Office Is In Crisis’: LA Public Defenders Pen Plea To Reduce Workload*, LAist, Mar. 8, 2022, <https://laist.com/news/criminal-justice/public-defenders-workload-cases>. The letter sent by the union stated that more than half of the attorneys in the office “said they have considered quitting due to workload issues, nearly 80% said they do not have adequate time to prepare for cases, and 70% said their current workload is unmanageable.” *Id.*

funding for support staff in public defender offices (or with contracted public defenders). By providing the funding necessary to staff paralegals and investigators and even social workers or mental health counselors, we drastically reduce the burden of caseloads that public defenders encounter. Prosecutors' offices are more likely to have support staff than public defender systems, so staffing parity should be a priority. Our adversarial system requires staffing parity to exist in a fundamental way. Knowing that there is sufficient support staff would not only help retain public defenders and mitigate some of the effects of burnout, but also would help recruit new attorneys if they knew they wouldn't be three steps behind when they walked in on their first day. Staffing parity and funding for support staff should be a critical matter in our quest for a more just society.

There have been other creative suggestions for addressing the attorney shortage issue as well.

Addressing Rural Indiana

Some rural areas of the United States have started recruiting attorneys and paying them stipends to work in these underserved, rural areas. Indiana has tried a similar model with backing from the Indiana Supreme Court and the two Indiana University law schools. While this may re-direct some young attorneys to underserved areas, the question remains if it will increase the number of attorneys to a point where the shortages can be mitigated. For example, states such as Nebraska have begun attempting to recruit promising high school students to study and practice law in rural areas.¹⁶ But this is a risky proposition by relying on the agreement of adolescents to make decisions that wouldn't come into fruition until eight or more years in the future.

The Student Loan Dilemma

Similarly, as a more realistic option than the federal Public Service Loan Forgiveness program, some states have experimented with their own loan forgiveness programs. These states offer some degree of tuition or loan reimbursement in exchange for working in public defense, government, or even any public service area of law. These programs are often limited to areas of need, such as rural areas, but could be expanded to especially pressing areas of need such as public defense more generally. Because the federal program exempts individuals from working, for example, as parttime public defenders, a state program could be more narrowly

¹⁶ See Lisa R. Pruitt, et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 Harv. L. & Pol'y Rev. 15, 114 n.577 (2018).

tailored to meet the needs of Hoosiers.¹⁷ In South Dakota, for example, the state takes an interesting approach in which it reimburses most of the cost of in-state law school tuition for students who engage in rural legal practice.¹⁸ Indiana could take a similar approach for public service attorneys more generally or public defense attorneys in particular.

Creating Public Service Fellowships

Another solution floated by some researchers is the development of a fellowship program to encourage recent law school graduates to enter public service or public interest law. Much like medical internships, a public law corps could provide training to recent law graduates and help place them in underserved areas which would come with a decent, but not extravagant salary. This could help pair qualified candidates with locations in dire need of attorneys. Likewise, this could foster a dynamic engagement for the new attorney and a long-lasting desire to continue to use their talents in similar ways throughout their career.

Better Use of Existing Resources: JRAC and the PD Commission

Many years ago, under the leadership of State Representative Greg Steuerwald, the General Assembly established the Justice Reinvestment Advisory Commission (JRAC). This multi-branch commission was designed to bring all key criminal justice stakeholders together to focus on big-picture issues impacting the state. Addressing the lawyer shortage would appear to be an ideal use of this pre-established group. (For more information about JRAC, click [HERE](#).)

An additional way to address some of the issues presented is through the continuing work of the Indiana Public Defender Commission. Continuing to develop and evaluate standards, as the Commission is already doing, can be a stand-in while the attorney shortage is addressed. By dynamically engaging with counties and their public defender systems, these standards can provide insight as to where more attorneys are needed, where caseloads need to be adjusted or support staff needed to provide, zealous, competent and a holistic defense. However, for many years now, the Commission has been hamstrung by a statutory prohibition from reimbursing counties for misdemeanor representation expenses, discouraging approximately 25 current Indiana counties from participating in the Commission's standards and reimbursement process and discouraging public defenders by allowing misdemeanor-exclusive attorneys to continue to be overworked and underpaid.

¹⁷ A non-exhaustive list of states implementing their own loan forgiveness programs includes Maryland, Nebraska, New Mexico, New York, North Carolina, Oregon, South Dakota, and Vermont.

¹⁸ See South Dakota Unified Judicial System, Rural Attorney Recruitment Program (<https://uj.s.sd.gov/Attorneys/RuralRecruitment.aspx>).

The Indiana Task Force on Public Defense also produced a comprehensive report, including a set of key recommendations, in 2018. While some of these recommendations have been achieved, other reforms are still necessary to address the remaining systemic problems. (Click [HERE](#) to view the work of the Task Force.)

Addressing Rules of Bar Admission, ABA Accreditation, Legal Deserts

Several other potential solutions to this issue were also highlighted by veteran Indiana legal journalist, Marilyn Odendahl, in a report featured on The Indiana Citizen website. (Click [HERE](#) to read comments from Indiana’s Chief Justice and other leaders of Indiana’s legal community from Ms. Odendahl’s comprehensive reporting.)

V. Conclusion

In addition to the reporting from the Evansville Courier & Press, Managing Editor Daniel Carson with the Indiana Layer recently highlighted this issue with comments from Indiana Prosecuting attorneys and the Indiana Prosecuting Attorneys Council. (Click [HERE](#) to read the article from July 19).

The attorney shortage in Indiana is widespread but most notably affects the indigent defense system. The indigent defense system has been a largely underserved area of our criminal justice system and the prevailing issues are only going to get worse. Without a holistic inquisition into the reasons that Indiana is in the situation it is in and an application of solutions to address the problems increasingly at the forefront, we remain fixed at a crossroads of our own making. While the problems may seem theoretical or academic to many of us, the problems outlined in Vanderburgh County are not theoretical to the public defenders or the county’s defendants and their families. The direction we turn has dire implications for how we view our state, the reverence we have for the legal processes of the Constitution, and the sanctity of the lives of those caught up in the criminal justice system who are imbued with the same rights as those making the decisions on which way to turn.

This article was produced by the staff of the Indiana Public Defender Commission and was a collaboration between Andrew Scheer, Law Clerk, Andrew Falk, Staff Attorney, and Torrin Liddell, Director of Research & Data Analytics.

Additional content and editing provided by Derrick Mason, Executive Director, Andrew Cullen, Director of Public Policy & Communications, and Linda Hunter, Operations Administrator.

Click [HERE](#) for contact information for all individuals. Media inquiries should be directed to [Andrew Cullen](#).