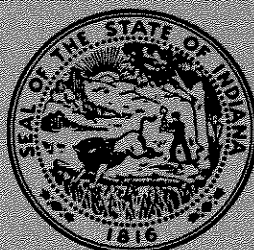


EVALUATION OF PARTIAL STATE FUNDING FOR PUBLIC DEFENDER SERVICES IN INDIANA

July 1986

Prepared by

The Spangenberg Group
Robert L. Spangenberg
Patricia A. Smith



Published by

Indiana Public Defender Council
309 W. Washington Street, Room 401
Indianapolis, IN 46204-2725

NOTICE

This report was prepared by Robert L. Spangenberg and Patricia A. Smith of the Spangenberg Group, 1007 Beacon Street, Newton Centre, Massachusetts, 02159, at the request of the Indiana Public Defender Council and the Criminal Justice Section of the Indiana State Bar Association.

Funding for this project was provided by the American Bar Association's Bar Information Project.

For additional information contact:

Indiana Public Defender Council
309 W. Washington Street, Room 401
Indianapolis, IN 46204-2725
(317) 232-2490

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
Indiana's Judicial System	2
Overview of Indigent Defense Services in Indiana.....	4
Systems for Providing Defense Services Around the Nation.....	7
National Trends in the Provision of Defense Services.....	9
Comparing Indiana with the Rest of the Nation.....	10
Historical Attempts to Improve Indigent Defense in Indiana.....	13
The Present Technical Assistance Project.....	14
THE PROPOSED LEGISLATION.....	17
Highlights of the Bill.....	17
Why is This Bill Necessary?.....	27
FISCAL IMPACT OF PD 5289.....	29
Calculating the Indigent Criminal Caseload.....	30
Projecting the Total Costs of Indigent Defense.....	34
Estimating Revenues Under PD 5289.....	36
Calculating the Overall Fiscal Impact.....	38
CONCLUSIONS.....	41
Other Issues for Review.....	41
APPENDICES	
Appendix A: Text of Proposed Bill PD 5289	
Appendix B: Listing of Criminal Costs from Court Clerks' Manual	

INTRODUCTION

During the upcoming 1987 Session of the Indiana General Assembly, the State's lawmakers may consider a bill which proposes to make significant changes in the system for overseeing and funding the provision of indigent defense services in the state's 92 counties. In 1985 the Legislative Interim Study Committee of Probation Services and Indigent Counsel reviewed defense services to indigents and legislation endorsed by the Indiana State Bar Association, the Indiana Public Defender Council and the Indiana Public Defender Association. No bill was submitted in the 1986 legislative session because it was a short session in the middle of the budgetary biennium.

The Committee strongly endorsed the concepts of this proposed legislation. Among other things, PD 5289 would create an Indiana State Public Defender Commission to set standards for and approve county defense programs and would also provide for reimbursement by the state of 50 percent of the counties' expenditures for indigent defense. This report is intended to provide the essential background information necessary for informed deliberations on the merits of the bill.

The following introductory sections review Indiana's judicial system, the present system for providing defense services in Indiana, the systems for providing defense services around the nation, national trends in the provision of these services, and a comparison of Indiana's defense system with the rest of the nation. Finally, the history of attempts to improve defense services in Indiana is reviewed and the technical assistance project culminating in this report is described. The second portion of the report analyzes the proposed legislation and discusses some of its major provisions, particularly those that have financial implications. The reasons why PD 5289 is necessary to

improve the provision of defense services in Indiana are also outlined in this second part of the report. The third part of the report discusses the fiscal impact of the bill, providing an initial estimate of the costs, to both the state and the counties, of an indigent defense system incorporating the changes proposed in PD 5289, based on the limited data available.

Indiana's Judicial System

The Indiana Supreme Court handles direct appeals only in those criminal cases where a penalty of death or a sentence of more than ten years is imposed. (Ind. Court, Art. 7, Sec. 4) The Court has original jurisdiction over matters concerning the conduct of the bar and the bench. The Court may issue any writ necessary to exercise its appellate jurisdiction and, in all criminal appeals, may review any question of law or review and revise the sentence imposed by the trial court. The Court has 5 justices appointed by the Governor after nomination by a judicial nominating commission. (After two years, justices come before the electorate on a "Yes-No" retention ballot; if successful, they serve ten-year terms.)

The Court of Appeals has no original jurisdiction, but pursuant to Supreme Court rules has appellate jurisdiction in all criminal cases (including sentencing review) except for those cases noted above which may be appealed directly to the Supreme Court. (Ind. Rules of App. Proc., Rule 4) The court is also empowered to hear interlocutory appeals. The 12 judges serving 4 "Districts" are selected in the same manner and serve the same terms as Supreme Court justices.

The Circuit Courts in Indiana are by statute vested with original jurisdiction in all civil and criminal matters, except when exclusive

jurisdiction is conferred upon other courts of the same county. (I.C. 33-4-4-3) They also have appellate jurisdiction over appeals from the city and town courts. There are 89 circuit courts throughout the state (three circuits are made up of two counties each). In 21 counties the circuit court maintains small claims and minor offenses divisions, while in the remainder of the counties such cases are handled in the Superior or County Courts. Judges of the Circuit Court are elected every 6 years.

The Superior Courts are also courts of general jurisdiction in criminal matters, with the same appellate jurisdiction as the Circuit Courts. Thirteen Superior Courts have concurrent jurisdiction with the circuit court, 14 have concurrent jurisdiction in all but probate and juvenile matters, and six have exclusive jurisdiction over juvenile and probate and concurrent jurisdiction with Circuit Court in all other cases. In Marion County, all criminal cases are heard in the Superior Courts, with the exception of those brought in Marion County Municipal Court. As of December 31, 1984, there were 105 Superior Courts serving 43 counties. Superior Courts are created individually by the General Assembly as local needs dictate. For the most part, judges of the Superior Court are also elected to 6-year terms by the voters of Indiana.

County Courts began operating in 1976 in place of the disappearing Justice of the Peace Courts. The County Court has original and concurrent jurisdiction in Class D (less serious) felonies, misdemeanors and infraction cases, and violations of local ordinances, along with jurisdiction over certain civil matters in which the debt or damage does not exceed \$10,000. The court may conduct preliminary

hearings and set bail in felony cases. There are 60 county courts, served by 57 judges elected for six-year terms.

The Marion County Municipal Court replaces the County Court in Indianapolis and has concurrent jurisdiction with the Criminal Court in all Class D felonies, misdemeanors, infractions, and local ordinance violations. The court also has jurisdiction to conduct probable cause hearings in felony cases and to bind over to the Superior Court when probable cause is found. The court also has jurisdiction over civil matters in which the debt or damage claimed does not exceed \$20,000 and involuntary mental commitments, among others. There are 15 judges of the Marion County Municipal Court, all of whom are nominated by a local nominating commission and then appointed by the Governor for a four-year term.

Overview of Indigent Defense Services in Indiana

Indigent defense services in Indiana are presently organized and funded entirely at the county level, with the exception of the services provided by the State Public Defender. This office represents on demand indigent convicted adults and indigent adjudicated delinquents committed to Department of Correction facilities in challenges to their convictions, sentences, or adjudications after the time for appeal has expired. The office also provides trial level representation when appointed and compensated by the county. In contrast to the post-conviction relief matters handled by the State Public Defender, direct appeals in the state are handled by court-appointed counsel and paid for by the counties. However, the trial court may appoint the State Public Defender and pay for services pursuant to a fee schedule established by the Indiana Supreme Court.

State funding is also provided in support of the Indiana Public Defender Council, which was originally established under an LEAA grant, but is now a state agency. The Council provides research, training, and technical assistance to attorneys representing indigent defendants, but no direct representation. According to the statute establishing the Council (I.C. 33-4-12), it has five main responsibilities:

- 1) aid attorneys who defend indigents;
- 2) prepare manuals of procedure;
- 3) help prepare trial briefs, forms and instructions;
- 4) conduct resesarch; and
- 5) maintain contact with other governmental agencies which deal with criminal defense.

By statute, (I.C. 37-9-10) judges of the courts of criminal jurisdiction in Indiana are authorized to contract with any attorney or group of attorneys for the defense of indigents, except counties with a population of 400,000 or more. There is currently no statutory authority for the public defender programs existing in the two counties (Lake and Marion) with populations in excess of 400,000.

According to a recent survey of county programs by the Indiana Public Defender Council, there are currently 55 public defender, 63 assigned counsel and 57 contract programs in the state. (These figures add up to greater than 92 because many counties utilize a mix of systems to provide indigent criminal representation in all courts in the county.) In 32 counties the predominant method of defense service delivery is assigned counsel while in the remaining 60 counties public defender or contract programs predominate.

Some confusion exists over the distinction between a "public defender" and a "contract" program, making it difficult to accurately assess the actual procedures for providing indigent defense across the state. Many programs that are called "public defender" in Indiana do not fit the mold of what is typically thought of when that term is used: A salaried staff of full-time or part-time attorneys, with a fully-equipped office rendering services through a public or private nonprofit organization. Instead, many "public defender offices" in Indiana counties consist of one or more attorneys contracting annually on an individual basis with a judge or judges to provide defense services. Usually, attorneys only serve part-time as public defenders. Under such circumstances, attorneys most often operate out of their private offices, although in some courts, desk space is made available in the courthouse. Such programs might more appropriately be designated contract programs. Thus, it is difficult to get an idea of the actual procedures for providing indigent defense representation simply by looking at what the programs call themselves--closer scrutiny is required to develop an accurate sense of individual program characteristics.

One of the more unique aspects of the Indiana indigent defense system is that, by statute, public defenders and contract attorneys are for the most part appointed by each individual judge to serve in his or her courtroom. This practice has been the subject of controversy for the past decade, which has resulted in redefinition of that authority in certain jurisdictions. For example, in several counties surveyed, the judge appoints a chief public defender, who then hires a staff of deputies. Elsewhere, committees of judges (and attorneys

in some cases) appoint the attorneys. In one county a public defender advisory board consisting of attorneys and lay people provide the judges with a list of suitable candidates for public defenders from which they make appointments. In a few counties, while the judges appoint individual attorneys to serve as public defenders, the attorneys are not assigned to a specific courtroom but may be rotated through the various criminal courts in the county on an as-needed basis. Generally, this occurs only where there is a Chief Public Defender or some other administrative personnel to monitor the courts' needs and assign attorneys as necessary. The procedures in each county for choosing and appointing counsel range from the very simple to incorporating complex formulas, with no state standards or guidelines governing them.

Systems for Providing Defense Services Around the Nation

While the U.S. Supreme Court has mandated the right to counsel for indigent defendants in felony, misdemeanor, and juvenile cases, and has set certain guidelines for when counsel must be appointed, it has left the implementation of a system for indigent defense to the 50 states. It is up to the states to determine which type of programs are to be used and how they are to be funded. Needless to say, this results in a wide variety of programs and systems across the country. Two recent studies have contributed greatly to a better understanding of the characteristics of these myriad systems: 1) the American Bar Association's 1982 report on Criminal Defense Services to the Poor, by Professor Norman Lefstein; and 2) The National Criminal Defense

Systems Study published in May of 1984, conducted by Robert L. Spangenberg, et al. of the then Criminal Defense Group at Abt Associates Inc., for the U.S. Department of Justice, Bureau of Justice Statistics. Information from these sources, and updated information that we are constantly receiving from contacts in the field are summarized in the following outline of the various levels of organization and types of indigent defense systems in the United States.

Level of Organization

- Indigent defense services are presently organized on a statewide basis in 17 states: Alaska, Colorado, Connecticut, Delaware, Hawaii, Kentucky, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, West Virginia, Wisconsin and Wyoming.
- 3 states have a central organization but are not responsible for providing services throughout the entire state: Nevada, Ohio and Kansas.
- Half of the states place the responsibility for providing defense services with the counties.
- 2 states organize services on a judicial district or circuit level: Florida and Minnesota.
- Several states are organized on both a county and judicial district basis: Arkansas, Georgia, Louisiana, and North Carolina.

Type of System

- Public defender programs were utilized by 34% of the counties across the United States in 1981-82.
- In 22 states, public defender programs are currently the predominant system of delivery. There is at least one public defender program in every state but Maine and North Dakota.
- 60% of all counties in the nation were served by assigned counsel programs in 1981-82, but they serve only about one third of the population because they were found most frequently in the smaller counties.

- Approximately 25% of all assigned counsel programs are coordinated, that is they have an administrative component and a set of rules and guidelines governing the appointment and processing of cases handled by the private bar.
- Assigned counsel programs predominate in 17 states. Today Maine is the only state which relies exclusively on private assigned counsel.
- In 1981-82, contract programs existed in 6% of the counties, most clustered in a few states. At that time, 32 states had no contract programs at all.
- Use of contract programs has grown substantially and in at least two states--North Dakota and Washington--those states can be characterized as predominantly contract states at the present time. The growth of contracts has been substantial nationwide--particularly in the area of providing backup to Public Defenders in conflict cases.
- A number of states provide indigent representation through a mixed system such that no one type of program predominates: Arizona, Idaho, Indiana, Massachusetts, Michigan, Minnesota, New Mexico, Oregon and Utah. (Although Massachusetts and New Mexico are organized on a statewide basis, a variety of programs is utilized in each state to provide direct representation to indigents.)

National Trends in the Provision of Indigent Defense Services

We have observed a number of general trends in the provision of indigent defense services since the National Criminal Defense Systems Study was completed. The most significant of these trends include:

- There has been a move towards state funding of indigent defense services. Since 1982, when 17 states funded indigent defense services, six more states have passed legislation providing for full state funding (Missouri, Oregon, Delaware, and Kentucky, Delaware and Iowa) for a total of 23 states. An additional 10 states support their programs with both state and county funds (Florida, Kansas, Montana, Nevada, New York, North Dakota, Ohio, South Carolina, Tennessee and Wyoming). Finally, a number of states have given consideration over the past several years to providing some level--or increasing

the already existing level--of state funding including Indiana (the others are Georgia, Nebraska, Washington, and South Carolina). Legislation that has been enacted in Iowa provides for state takeover of the costs of indigent defense in 1987.

- There has been an increased reliance in recent years on establishing independent indigent defense commissions or boards at the state level to oversee the provision of services throughout the state. Since 1982, when there were 13 permanent commissions (all part of statewide public defender programs except Ohio), an additional 6 states have established such commissions (Kansas, North Dakota, Oregon, Massachusetts, Missouri, and West Virginia). In addition, consideration has been given to similar proposals over the last three years in five states, including Indiana (the others are Washington, Maine, Virginia, and South Carolina). These commissions vary considerably in terms of how they are constituted and their responsibilities, which are discussed in greater detail later in this report.

One important characteristic of several of the more recently established commissions is that they preserve local autonomy through county option provisions, with the state agency reviewing and certifying that individual county plans for providing defense services meet state standards. This is the type of system that is proposed for Indiana.

- There has been an increased emphasis on cost containment procedures, such as establishing formal indigency guidelines to assure only the truly indigent receive counsel at public expense.
- There has also been a concerted effort to identify and take advantage of alternative sources of revenues, rather than annual state appropriations, such as collecting from the defendants (either through contributions up front or recoupment after disposition) and imposing court costs on defendants in a wide range of cases.
- Indigent caseloads around the nation have been increasing at a steady rate of between 5 and 10% for the last several years.

Comparing Indiana with the Rest of the Nation

According to the national survey conducted in 1981-1982, Indiana was ranked 45th in the nation with a per capita cost for

indigent defense services of only \$1.01. According to our estimates based on the limited data available from the State Court Administrator's Office, in 1985 that figure has increased to \$1.48 (including the amount spent by the state on the state public defender and the Indiana Public Defender Council). In terms of the average cost per case, in 1982 Indiana ranked 41st at \$131 per case. In 1984, the cost per case (based on county expenditures alone and caseload data reported by the State Court Administrator's Office) is \$138. This slight increase fails to bring the cost per case in Indiana anywhere near the 1982 national average of \$196, much less the currently estimated nationwide average cost per case of \$220. Even with the modest improvements that have occurred in Indiana, the gap between it and the other states has actually widened since 1982 as a result of substantial increases in defense expenditures in a number of states. Indiana fares little better when compared to states with similar demographic characteristics. The following table compares costs and cost per case in states with populations similar to Indiana. An analysis of this table reveals that once again Indiana falls in the lower middle range in terms of both per capita and per case expenditures. Even using the high figure of \$1.48 for its per capita cost (based on the total of state and county expenditures in 1984) Indiana lags 82 percent behind the next highest state, Massachusetts, at \$2.70. Indiana's cost per case expenditures in 1984 of \$165 fall 41 percent behind the \$264 expended per case in the state of Wisconsin.

TABLE 1
A COMPARISON OF COSTS AND COSTS/CASES IN STATES WITH COMPARABLE POPULATION

STATE	1980 POPULATION	TYPE OF SYSTEM	WHO FUNDS?	EXPENDITURES			FY 1982 COST CASE	1985 COST CASE	% INCREASE DECREASE
				FY 1982	FY 1985	FY 1985 PER CAPITA			
WISCONSIN	4,706,000	State Public Defender	State	\$13,350,200	\$17,814,474	\$3.79	\$263.56	+14.6%	
NORTH CAROLINA	5,882,000	Mixed A/C & P/D	State & County	\$11,004,038	\$12,673,701 (FY 1984)	\$2.15	\$202.27	+ 8.2%	
MARYLAND	4,217,000	State P/D	State	\$10,270,310	\$15,139,614	\$3.38	\$183.13	+39.8%	
MISSOURI	4,917,000	State P/D & Contracts	State & b County	\$4,408,413	\$5,800,000	\$1.18	\$173.13	+25.5%	
MASSACHUSETTS	5,737,000	State Ad- ministered; Mixed A/C and P/D	State	\$13,092,198	\$15,872,588	\$2.70	\$178.00	- 0 -	
TENNESSEE	4,591,000	Mixed A/C, P/D & Contract & Juv. & (Misc.)	State (fel.); County (Juv. & (Misc.))	\$3,732,880	\$5,651,070	\$1.23	\$143.41	- 0 -	
GEORGIA	5,463,000	Mixed P/D & A/C	Counties	\$5,672,712	\$6,949,072	\$1.27	\$136.32	+ 4.1%	
INDIANA	5,490,000	Mixed P/D & A/C	Counties	\$5,551,430	\$6,763,627 (CY 1984)(d) (\$8,083,394)	\$1.22 (\$1.48)	\$138.00 (\$165)	+ 1.0%	
VIRGINIA	5,347,000	A/C by County w/ 4 Pilot P/D's	State	\$8,289,380	\$7,900,767	\$1.48	\$109.97	-1.0%	

(a) Cost figure does not include office expenses, which are paid for by the counties.
 (b) Office expenses & utilities (except for phone) covered by counties; thus, overall cost estimate is low.
 (c) Based on trial court cases only; no general session courts caseload data available.
 (d) Figures in parentheses include state expenditures for the State Public Defender and

Recognizing that Indiana does not compare favorably with other similar states in terms of expenditures for defense services being provided, there have been a number of efforts over the past decade to improve the system for providing defense services in Indiana. These efforts have included both studies by experts in the field of criminal defense and legislative initiatives to improve the system.

Historical Attempts to Improve Indigent Defense in Indiana

Several studies were conducted during the past decade by specialists in the field of indigent defense looking both at the overall state and at Marion County alone. In addition, the Indiana and Indianapolis Lawyers Commissions conducted an ongoing review of indigent defense issues in Indianapolis and throughout the state in the late 1970s. The recommendations of these study groups led to a number of legislative proposals, primarily intended to establish a public defender agency in Marion County, to create a public defender commission at the state level, and to provide for some level of state funding. Specifically, these activities included the following:

Studies

- NLADA conducted a statewide review of "The Structure and Funding for Criminal Defense of Indigents in Indiana" in 1974.
- The Public Defender Services Committee of the Indianapolis Lawyer's Commission examined indigent defense services in Marion County, other Indiana counties, and other states in 1976.
- The National Center for Defense Management (under the auspices of the LEAA Criminal Courts Technical

Assistance Project) conducted "An Analysis of Indigent Defense Services in Marion County (Indianapolis), Indiana" in January of 1977 at the request of the Indiana Criminal Justice Planning Agency.

- The Criminal Defense Technical Assistance Project, funded by LEAA (Robert L. Spangenberg, Project Director), prepared a report on "The Public Defender System, Marion County, Indiana: Current and Projected Costs" in January 1980, again at the request of the Criminal Justice Planning Agency.

Legislative Highlights

- SB 376 was submitted in 1979 to establish a public defender agency in Marion County. A Senate Judiciary subcommittee unanimously recommended passage, but the bill was withdrawn at the request of the Indianapolis Bar Association (IBA), which established a Public Defender Committee to determine whether the deficiencies in the system for providing defense services in Indiana could be adequately cured without legislation.
- In 1980, SB 385 (nearly identical to SB 376), was filed with the endorsement of the IBA but, due to the fact that 1980 was a short session, the bill was not called for a hearing.
- Similar legislation was filed in 1981 and was passed by the Senate but failed to get a hearing in the House of Representatives. Legislation to create an independent Marion County Public Defender Office has not been resubmitted since 1981.
- HB 1860, to create a public defender commission with a 25% state reimbursement for county defense expenditures, was submitted in 1985. The bill received a unanimous recommendation by the House Judiciary Committee, but was not called on third reading and died.
- PD 5289 would create a Public Defender Commission and provide 50% reimbursement. The proposed bill has been endorsed by the Legislature's Interim Study Committee on Probation Services and Indigent Counsel, and may be filed in the upcoming (1986) legislative sessions.

The Present Technical Assistance Project

The Criminal Justice Section of the Indiana State Bar Association and the Indiana Public Defender Council contacted the

American Bar Association Bar Information Project in the fall of 1985 to request technical assistance in support of the proposed legislation to be submitted in 1986. As a result of this request, the Bar Information Project sent Robert L. Spangenberg and Patricia A. Smith of the Spangenberg Group in Newton, Massachusetts to Indianapolis for two days in early November 1985. During the course of the visit, we interviewed the following individuals in person:

- Larry Landis, Executive Director of the Indiana Public Defender Council
- Susan Carpenter, State Public Defender
- Bruce Kotzan, State Court Administrator
- Lilia Judson, Assistant State Court Administrator
- Joseph Loftus, Chief Staff Person for Pat Keily, Chairman of the House Ways & Means Committee
- Chuck Nemeth and Charles Pride, State Board of Accounts
- John Sweazey, Chairman of the Marion County Republican Central Committee
- Bobby J. Small, Director, Indiana Criminal Justice Institute
- Judy Honey, Executive Assistant to the Governor.

In addition to these interviews, indigent defense data from the following sources was collected and analyzed:

- 1982 data on selected Indiana counties collected for the National Criminal Defense Systems Study; the 17 counties in this survey included all the largest counties and a stratified sample of the remaining counties;

- 1983 Indiana Judicial Report data published by the Division of State Court Administration, particularly on county expenditures for indigent defense;
- 1984 Indiana Judicial Report data, particularly overall criminal caseload statistics;
- Data reported during phone survey of selected Indiana counties conducted in November of 1985. Information gathered included program descriptions, 1984 costs, 1984 caseload, and projections for 1985, where possible.
- Data provided by the Office of the State Public Defender, including the Annual Report for fiscal year 1984-85; and
- Program information included in the files of the Indiana Public Defender Council.

Information collected from all of these sources has been used to develop the estimates and projections included in this report describing the overall impact of PD 5289 on the system for providing defense services in Indiana.

THE PROPOSED LEGISLATION

Despite the fact that the Indiana General Assembly did not act favorably on HB 1860 during its 1985 session, it recognized the need for further study of the indigent defense issue, and created the Interim Study Committee on Probation Services and Indigent Counsel. The Committee consisted of six senators and six representatives. Its activities included reviewing the present system for service delivery and recommending specific changes in the legislation to address the problems identified. This process resulted in the drafting of PD 5289, based on HB 1860. In its meeting on October 16, 1985 the Committee "strongly recommend[ed] the concept of PD 5289 and most aspects of the proposed draft." A few issues regarding the appointment of members of the state commission and county boards were left open for resolution during the final discussion of the bill.

*

Highlights of the Bill

There are two main features of the proposed legislation:

- 1) the creation of a state public defender commission,
and
- 2) the reimbursement by the state of 50 percent of the counties' defense expenditures.

Additional provisions of the bill would include:

- the creation of county public defender boards;

*

The full text of PD 5289 appears in Appendix A.

- the collection of contributions from partially indigent defendants; and
- the imposition of court costs on persons who plead or are convicted of felonies, misdemeanors and infractions.

The Indiana State Public Defender Commission, as presently proposed, would consist of 7 members:

- 2 persons, appointed by the governor, who have demonstrated an interest in the proper functioning of the defender system and who do not both belong to the same party;
- 2 persons, appointed by the Supreme Court of Indiana, who do not both belong to the same party;
- 2 attorneys, appointed by the president of the largest professional organization of attorneys in the state, who do not both belong to the same political party;
- An attorney appointed by the President of the Indiana Public Defender Association.

Several members of the Interim Study Committee suggested that all appointments to the Commission should be made by elected officials, apparently objecting to the provisions that would enable attorneys' associations to make appointments. This issue was left open by the Committee and will have to be resolved eventually. The experience in other states with similar commissions indicates that who is appointed to the commission is more significant to its operations than who makes the appointments. The Commission should be broadly-based and representative of the state's legal community. Members should be chosen on a bipartisan basis. Finally, because of the potential for conflicts of interest, judges and/or prosecutors should not be appointed to

the Commission. The proposed legislation appears to be cognizant of most of these requirements.

The Commission's responsibilities would include appointing the State Public Defender; establishing standards for defense services (indigency guidelines, attorney eligibility standards, and caseload standards, among others); establishing fee schedules for payment of private counsel; reviewing the comprehensive plans for providing defense services submitted by the newly created county defender boards and certifying that they meet the standards established by the Commission; and reimbursing the counties whose plans are approved.

A number of other states have developed a permanent state board or commission over the last several years. These bodies vary considerably in terms of how they are constituted and procedures for the appointment of the board, the major functions of the board and the nature and responsibility of the local county organizations (if any are included).

The following examples illustrate some of these differences:

- In Missouri, the legislature created a State Public Defender Commission on April 1, 1982 with the responsibility of administering a statewide public defender system for the entire state. At the same time, funding responsibility was shifted from the counties to the state.
- In Massachusetts, the legislature created the Committee for Public Counsel Services to begin on July 1, 1984. The Committee has the total responsibility for administering the mixed public defender private bar program and is required to develop numerous standards and guidelines.

A number of states have formed a permanent commission in recent years without adopting a statewide public defender approach. These commissions are more nearly analogous to the one proposed in Indiana.

- In 1983, the Kansas legislature created the State Board of Indigent Defense Services. The legislature attempted to empower the Board to develop standards and guidelines for local program operations, while leaving the choice of the program to the counties.
- In North Dakota, the North Dakota Supreme Court established the North Dakota Legal Counsel for Indigents Commission by Administrative Rule in 1982. The purpose of the Commission is "to provide planning, guidelines and technical assistance to counties and judicial districts in the improvement of defense services for indigent defendants in criminal cases in North Dakota." The Commission has developed detailed indigency standards, a detailed plan for implementation of recoupment orders, established a new fee schedule for court appointed counsel and developed a model contract for contract defense programs. Like Kansas, it is up to each county to determine which type of system is most appropriate for their jurisdiction.
- In Oregon, the state legislature in 1985 created the State Indigent Defense Board to conduct continuous oversight into the state funded, but county option program. Among the responsibilities of the Board are to develop standards for local program operation, to establish a minimum fee schedule for the private bar, to develop standards and procedures for contract defense programs, to provide legal training for lawyers providing indigent defense services and to gather and collect pertinent statistical data.
- The Ohio Public Defender Commission was established ten years ago with many of the same goals and requirements of other Commissions just discussed. One of the interesting features of the Ohio Commission is the reimbursement by the state of up to 50% of the county expenditures for the local program if the local programs meet the standards and guidelines established by the Commission. The Ohio Commission is substantially larger and performs many more tasks than the

other commissions just discussed. While retaining the local county option concept, it now handles many of the indigent defense cases on appeal, represents inmates in the state prison and provides back-up counsel in complex cases such as death penalty for local court appointed counsel and local county public defenders. This system in Ohio is similar in many of its key elements to the proposed legislation in Indiana.

The 50 percent reimbursement provisions in PD 5289 are modeled after the Ohio program. Although Ohio and Georgia (to some extent) are the only other states that use this specific mechanism for sharing the costs of indigent defense services, a number of states use other methods of achieving the same ends. In Wyoming, for example, by statute the state pays 85 percent of the costs while the counties contribute 15 percent. In South Carolina, the state subsidizes the counties according to a population-based formula and the counties make up the difference. Several states provide funds for representation in certain courts handling primarily felonies while the counties continue to pay for misdemeanor representation in the lower courts--these states include Kansas, North Dakota, Tennessee, and Montana. On a smaller scale, a number of states cover the majority of indigent defense costs while requiring that the counties contribute space and utilities to the programs (e.g., Florida, Missouri, North Carolina, and Kentucky).

In order to receive state funds under PD 5289, the counties must establish county defender boards, consisting of three members. The members would be chosen under the proposed legislation by the County Council, the county Circuit Court judge, and the president of the largest bar association in the county. Once

again, several members of the Interim Study Committee suggested that board members should be chosen by only elected officials.

The county boards would be responsible for preparing a comprehensive plan for providing defense services to indigent persons in the county. Counties may choose from among a number of program options in devising this plan:

- 1) A county public defender office;
- 2) A joint county public defender office;
- 3) Contract(s) with an attorney, group of attorneys or private organization; and/or
- 4) An assigned counsel system of panel attorneys (under rules to be established by the commission).

Other responsibilities of the county board would include recommending an annual operating budget for the planned program(s) and reporting annually to the County Council and the state commission on program operations. The board would be required to cooperate with the Commission in maintaining the standards established by that body. Finally, the county board would be empowered to appoint, contract with or maintain a list of attorneys for the provision of defense services.

The provisions in the bill for collecting contributions from defendants reflect a general feeling that those who receive free counsel and can afford to pay a portion of the expense should be required to do so. Many observers also suggest that defendants take more seriously their responsibility to communicate and consult with their appointed attorney if they have paid even a nominal fee for the services.

While collecting contributions up front from all clients who can afford to pay avoids some of the legal and political pitfalls associated with trying to recoup the costs from convicted offenders after disposition, a number of issues regarding the use of such programs require further study before claims of their effectiveness can be verified. The most significant of these questions is whether sufficient amounts can be collected to offset the administrative costs of the collections process and yield surplus revenues for the support of overall program operations.

Based on our experience, having just completed a year-long study of recoupment and contribution programs for the National Institute of Justice, U.S. Department of Justice, the record of other jurisdictions in collecting contributions from defendants is too limited to be conclusive regarding the ability to collect significant amounts. One factor that clearly has an impact on collections is the size of the fees assessed. Fees should be set low enough that they can be paid immediately and, preferably, in a lump sum. While some payments may be made in installments in special cases, such procedures increase the administrative costs of the collections effort and should not be used routinely.

Nearly all of the jurisdictions collecting contributions from partial indigents turn the money over to the state or county for deposit in the general fund. This practice is increasingly being challenged, on the grounds that the monies should be earmarked specifically for use in support of indigent defense services. In the state of Missouri, for example, the

State Public Defender has proposed legislation that would place such funds in a non-reverting revolving account for the purpose of underwriting the expenses of providing essential services such as special investigations and expert witnesses in complicated cases.

The proposed legislation for Indiana avoids these problems and the need for later revision by providing at the outset that any funds collected from partially indigent defendants would be deposited in a public defense fund to be administered by the State Public Defender. The monies in this fund would not revert to the state general fund at the end of the year, but would carry over into the next fiscal year.

Finally, the proposed bill would impose court costs of \$5 on virtually all criminal and quasi-criminal cases.* Specifically, court costs would be imposed on persons who plead guilty or are convicted of offenses in the circuit or superior courts; infractions or ordinance violations in the county courts or the minor offenses or violations docketed in a circuit or superior court; cases in municipal court; and in delinquency proceedings. Proposals such as this have increased in recent years, as jurisdictions have searched for alternative sources of revenues outside the general appropriations process. Five other states use court cost mechanisms similar to that proposed in Indiana:

* While the current draft of the bill included in Appendix A specifies a \$3 court cost, the general feeling was that that figure was unnecessarily low and could be raised to \$5. Thus, the \$5 figure is used throughout this report.

- Alabama - Funds collected are deposited in a fair trial tax fund (state)
 - \$5.00 on all criminal, quasi-criminal and civil cases docketed in municipal court
- Louisiana - \$4.50 for each misdemeanor, except a parking violation (up to no more than \$17.50 as specified by district judges)
 - \$10.00 felony (up to no more than \$17.50)
 - Collected funds are deposited in a district indigent defender fund
- Arkansas - Counties of 15,000-16,000 population: \$5.00 on each convicted or plead defendant in felony and misdemeanor (including traffic), in all courts
 - 34,600-36,600 population: \$5.00
 - 49,000-49,700 population: \$15.00
 - 24,000-25,000 population: \$5.00
 - Funds are deposited in a county public defender fund
- Tennessee - Counties with population of 450,000-750,000: \$10.00 on all state misdemeanor and felonies (no non-moving traffic)
 - Funds go to the county government for support of indigent services
- Ohio - \$7 on all misdemeanors (except parking tickets)
 - \$20 on all felonies
 - Funds are deposited in the state indigent defense fund

The court costs program in Ohio has been so successful that in FY 1985 the state collected over \$10.5 million, enough to cover all the expenses of reimbursing the counties for trial level services. (The state spent an additional \$3.5 million for the Office of the State Public Defender and the counties spent another \$10.5 million in support of direct services in their locale.) Out of a total state budget of \$25 million, 42 percent was generated through the imposition of court costs.

One factor that must be weighed when considering the financing of indigent defense in Indiana is the long list of 27 different types of court costs that already can be (and routinely are) assessed against convicted defendants. Under the present system an individual convicted of a class A misdemeanor or a felony could be assessed as much as \$71 in standard fees, covering court costs (\$10), state judicial fees (\$9), prosecuting attorney fees (\$42), and a service of process fee (\$10). Other costs may be added if the defendant is convicted by a jury (\$50), is on probation (initial and monthly user's fees vary), is in an alcohol or drug program (varies) and for a variety of other reasons. (See Appendix B for a full listing of possible fees and their amounts.)

In response to this complex system of collections (further complicated by the necessity to divide the funds between the state, the county and the locality) and the burden it places on the clerks of the courts in Indiana legislation will be submitted this year to consolidate all fees, most likely into a single fee for all types of cases, probably in the range of \$80-\$100. What effect this proposal would have on the ability to collect court costs under the provisions of PD 5289 is as yet unclear.

In each of the past several years the Indiana legislature has added several more court costs to the list. In 1984, for example, they added 4 or 5 new fees and amended 2 or 3 existing ones. Thus, even though some may have a philosophical objection to a "pay-as-you-go" criminal justice system, as long as the Indiana legislature apparently has a strong predilection for

using court costs to generate revenues for the system, and a reasonable number of the costs assessed are actually collected, such a provision may be an important advantage of the proposed bill.

Why is This Bill Necessary?

Studies conducted in Indiana over the past ten years have consistently pointed out a number of deficiencies in the indigent defense system. We personally observed some of these problems in our work in 1980 and again during the nationwide study we conducted in 1981-82. Many of these deficiencies identified in the past were again confirmed during our most recent visit in November 1985. These deficiencies include:

- There are no consistent, statewide standards for the operation of indigent defense programs. A patchwork of programs has developed around the state with considerable confusion even as to what they should be called. Contract programs are being used extensively without any of the necessary safeguards and performance standards to guard against choosing the lowest bidder for cost considerations alone. Attorneys with limited felony trial experience are receiving appointments in death penalty cases. There are no provisions for early entry of counsel, sometimes resulting in defendants remaining in jail for weeks waiting to see their attorney.
- Public defenders may have the appearance of being subject to judicial control because of the appointment procedures employed in most counties.
- Indigent defense services are underfunded because of the serious burden the costs represent in counties with a limited tax base. A single big case, such as a capital murder case, can wipe out a county's defense budget for an entire year. In many counties, substantial caseloads result in payment of only \$50-\$100 per felony case, creating an incentive to plead clients guilty rather than take cases to trial.

- Support services (such as clerical, investigative, and expert witness services) are not routinely available to defense attorneys, putting them on uneven footing with prosecutors.
- There are no provisions for caseload control. Salaried and contract public defenders take all cases and inevitably get overloaded at times. Without caseload/workload standards, overloaded lawyers are unable to spend the time necessary to defend individual cases, a situation which places the attorneys in danger of being in violation of their professional ethics, and denies defendants the meaningful defense to which they are entitled.
- There is a danger of increased claims of ineffective assistance of counsel under the present system with the problems outlined here. The costs of retrying cases in such circumstances can be extremely high and are better avoided by providing for adequate representation in the first place.
- There are limited cost containment measures, such as uniform indigency standards, contribution and/or recoupment programs. Further, there is little systematic monitoring of costs at the state level, and little accountability in the individual counties.
- There is no reliable statistical base for indigent defense data. Little information is available on the types of programs in existence. The information on indigent defense expenditures reported by the state court administrator's office is more reliable in some cases than in others, and it reports no data on indigent caseloads. A few counties collect and maintain this data centrally, but most do not.

Naturally, the passage of PD 5289 would not solve all of these problems immediately, but it would provide a framework within which even those issues not directly addressed by the bill could eventually be solved.

In summary, passage of PD 5289 would provide the following advantages:

- Consistency, uniformity and integrity of the system -- through the creation of a public defender commission charged with oversight of the provisions of indigent defense services across the state.

- Flexibility and local autonomy -- through the provisions allowing the counties to choose the program(s) for providing defense services in their locale. As the Interim Study Committee pointed out in its deliberations concerning the bill, one of its major advantages is that it "provide[s] flexibility for counties to design systems appropriate to their needs." Counties may even opt for no state oversight by the Commission by not forming a county board; these counties would, however, then have to forego any state funding.
- Accountability -- through the provisions regarding the maintenance of information on program operations along with expenditure data that would be carefully audited for purposes of reimbursement.
- Fiscal relief for overburdened counties -- through state reimbursement of half the counties' expenditures for indigent defense.
- Alternative sources of funding -- through the collection of contributions from partially indigent defendants and the imposition of court costs on nearly all persons who plead or are convicted of criminal offenses.

A number of the provisions of the bill, as noted above, relate to the costs and funding of indigent defense services in Indiana. The following section attempts to provide an initial estimate of the fiscal impact of those provisions.

FISCAL IMPACT OF PD 5289

The lack of data regarding the nature and level of indigent defense services presently being provided in Indiana makes it difficult to project reliably the fiscal impact of the proposed legislation. Nonetheless, analysis of the data acquired from the various sources described above has enabled us to begin to estimate in a broad manner the indigent criminal caseload, project the costs of providing representation in those cases, estimate the revenues that would be generated under the proposed legislation, and finally, to estimate the costs allocated to both the counties and the state under a 50 percent reimbursement plan. Throughout the following analysis, projections are made for the 1987 calendar year, assuming that the provisions of PD 5829 would be first implemented in that year if the legislation passes.

Calculating the Indigent Criminal Caseload

The most fundamental gap in indigent defense information in Indiana is in the area of caseload statistics. There simply are no aggregate statistics on the number of indigent cases in which representation is provided throughout the state. Without such information, or at least a reasonable estimate, it is impossible to make projections about the need for defense services and the expenses of providing them. In order to derive a reasonable estimate of the indigent caseload, first it is necessary to identify the total criminal caseload for the state for which a right to counsel exists.

The following figures are taken primarily from the 1984 Indiana Judicial Report, the most recent data available when this report was prepared. The figures represent cause numbers, which in some cases may include multiple defendants, while in others may correspond only to one of several charges against a single defendant arising out of a particular incident. For purposes of this exercise, it is assumed that the effects of these two factors on the caseload statistics neutralize one another and that these figures represent a rough equivalent of the number of defendants passing through the criminal courts. In order to provide the fullest accounting possible of defense-related activities, we have used the number of reported filings as the measure of caseload.

TABLE 2

TOTAL CRIMINAL CASELOAD - 1984

Felonies :	24,764
Misdemeanors :	97,588
Traffic Misdemeanors :	96,188
Juvenile cases :	<u>30,347</u>
Total Criminal Cases :	248,887

A number of adjustments have been made in the statistics reported by the State Court Administrator's Office. Cases categorized as "re-docketed criminal," which includes both felonies and misdemeanors, were allocated between those two categories proportionate to their numbers in each individual court as reported in the 1984 Judicial Report. Cases reported for the Marion County Municipal Court represent individual charges according to the State Court Administrator, thus the figures have been divided by two, the average number of charges per defendant observed in our experience in other jurisdictions around the country. Finally

the Marion County Municipal Court figures have been divided into felonies and misdemeanors according to information gathered on site regarding the number of Class D or less serious felonies handled in that court.

In order to determine how many cases actually resulted in the appointment of counsel, it is necessary to apply an indigency rate to each of the above figures. Indigency rates used below have been developed through a careful analysis of data collected in a recent telephone survey of selected counties' indigent defense programs. While the sample was biased towards the more established public defender offices (because they are the most likely to have such statistics available) it included a broad range of smaller and larger counties, and a good mix of urban and rural communities. The caseload information provided by the individual programs was compared with the total criminal caseload reported by the State Supreme Court Administrator's Office for the corresponding county to derive actual indigency rates in each of the major case categories. The averages of these figures were then taken and applied to the total criminal caseload to estimate the statewide totals of indigent defense cases. The indigency rate of 45 percent for felonies that resulted from this calculation is consistent with felony rates around the country reported in the 1981-82 National Criminal Defense Systems Study. The 16 percent rate for misdemeanors, however, is low compared to the national average of approximately 25 percent, probably due to the fact that the caseload figures used include a large number of traffic misdemeanors. The juvenile indigency rate of 23 percent is significantly lower than the approximately 75 percent reported for most states and the reasons for this disparity are unclear.

TABLE 3

ESTIMATED CALENDAR 1984 INDIGENT DEFENSE CASELOAD

<u>TYPE OF CASE</u>	<u>TOTAL CASES</u>	<u>INDIGENCY RATE</u>	<u>INDIGENT CASES</u>
Felonies	24,764	45%	11,144
Misdemeanors	193,766	16%	31,003
Juvenile Cases	<u>30,347</u>	23%	<u>6,980</u>
TOTALS	248,887	(18.7%)	49,127

This figure of 49,127 represents an estimate of the total number of cases in which the counties provided representation in calendar 1984. Defense services were provided by the state in another 1,148 post-conviction relief and other appellate matters ("files opened") including contracted-out cases, in FY 1984-85.

The estimated indigent defense caseload of 49,127 for 1984 is 17 percent greater than the approximately 42,000 cases reported for Indiana two years earlier in the 1981-1982 National Criminal Defense Systems Study. (That study collected reliable cost and caseload data from 17 Indiana counties, including the state's largest counties.) During the same period, the total criminal caseload for the state remained essentially the same, after accounting for the decriminalization of less serious traffic misdemeanors in 1982. The increase in indigent cases relative to the overall caseload in Indiana is not surprising given the financial strains experienced by many of its citizens as a result of the downturn in the nation's basic manufacturing industries and the deepening farm crisis. Other factors that could have an impact on the number of indigent cases, although there is not enough information available to assess the full extent of that impact, would include a possible loosening of the indigency

standards used for determining eligibility, new requirements in the laws mandating appointment of counsel and/or changes in the policies regarding the declaration of conflicts in cases involving co-defendants. Since none of these issues is going to disappear or be resolved immediately, we predict that the indigent caseload will continue to rise at a comparable rate of 18 percent per year over the 3-year period from 1984 through 1987. Thus, we project a total indigent caseload of 61,886 in calendar 1987.

Projecting the Total Costs of Indigent Defense

Fortunately, unlike caseload data, there is reasonably reliable expenditure data for indigent defense services in Indiana. The following table shows the trend in indigent defense expenditures for trial representation from calendar year 1982 to 1984.

TABLE 4

INDIGENT DEFENSE EXPENDITURES, CY1982 TO CY1984

1982	\$5,551,000*
1983	6,071,996
1984	6,763,627

* Because of the timing of the data collection phase of the National Criminal Defense Systems Study, some counties reported CY 1981 figures while others reported CY 1982 data. Thus, this figure represents an approximation of the CY 1982 expenditures for trial representation.

This table shows that indigent defense expenditures have been going up approximately 10 percent a year, generally reflecting the increase in indigent cases. Based upon all of the above data we estimate that costs for trial representation will continue to rise approximately 10 percent per year and should reach the level of \$9 million in CY 1987.

In calculating the overall costs of indigent defense in Indiana it is also necessary to factor in the state expenditures for appellate defense and training services. In CY 1984, the total state and county costs for indigent defense services were:

TABLE 5

TOTAL INDIGENT DEFENSE COSTS IN 1984

County Expenditures	\$6,763,627
State expenditures:	
State Public Defender	1,119,767
Public Defender Council	<u>200,000</u>
TOTAL 1984 COSTS	\$8,083,394

For purposes of projecting the costs of the Public Defender Council into 1987, we will use the amount of \$300,000, 10% greater than the \$272,000 FY 1985-86 appropriation.

Projecting the costs of the State Public Defender is more problematic, because the duties of that office would increase substantially under the proposed legislation. Further, the office projections indicated a 23 percent increase in costs from FY 1985 to FY 1986, to approximately \$1.4 million, even without adding any additional responsibilities because of the increased demand for their services. Assuming a relatively modest increase

of 10% from FY 1986 to FY 1987, these costs alone would be approximately \$1.5 million. We estimate that an additional \$1,125,000 dollars would be required for providing representation by the state public defender in all appeals. Administrative costs of the public defender commission are estimated at \$125,000 under the proposed legislation. Thus the total projected costs for 1987 are as follows:

TABLE 6

PROJECTED TOTAL INDIGENT DEFENSE COSTS FOR 1987

Trial	\$9,000,000
Appeals (State Public Defender)	2,625,000
Administration (State Public Defender Commission)	125,000
Public Defender Council	<u>300,000</u>
TOTAL 1987 COSTS	\$12,050,000

Estimating Revenues Under PD 5289

The final step required in evaluating the fiscal impact of PD 5289 is to estimate the revenues that will be generated under the various provisions of the bill which would offset the costs projected above. The two sources of additional revenues are contributions from partial indigents and court costs imposed on criminal offenders who have either plead guilty or been convicted.

Estimated revenues from partially indigent contributions are based on the initial assumption that many indigent defendants in any given category of cases will not have sufficient funds to make any contributions, particularly those on public assistance. For purposes of the following calculations we assume that 50 percent of the indigents would fall into this category. Second, we

assume that the remaining 50% charged with a felony will be assessed a \$100 felony fee, but that half of them will not pay the full amount of the assessment (for purposes of this calculation, we have assumed that half of those assessed \$100 will ultimately contribute only \$50). In misdemeanor and juvenile cases, defendants able to pay would be charged a standard fee of \$50, but once again we assume that half will pay only a portion of the fee, or \$25. Thus, we calculate the following revenues from contributions, based on projections of the indigent criminal case-load for 1987:

TABLE 7

PROJECTED REVENUES FROM CONTRIBUTIONS

<u>Type of case</u>	<u>1987 Total Proj. indigent cases</u>	<u>50% subject to Assessment</u>	<u>Level of Contributions</u>	<u>Total Contributions</u>
Felonies	14,038	7,019	3509 @ \$100 = \$350,900 3508 @ \$ 50 = <u>175,400</u>	\$526,300
Misdemeanors	39,054	19,527	9763 @ \$ 50 = 488,150 9764 @ \$ 25 = <u>244,100</u>	\$732,250
Juvenile	8,793	4,396	2198 @ \$ 50 = 109,900 2198 @ \$ 25 = <u>54,950</u>	<u>\$164,850</u>
Total Revenues from Contributions				\$1,423,400

Estimated revenues from court costs are based on the assumption that one-third of the adult criminal offenders and one-half of the juveniles adjudicated delinquent will not be able to pay or the courts will not be able to collect the assessment and

that the standard fee assessed will be \$5 per offender. Because there has been essentially no change in total criminal caseloads in recent years, these projections are based on 1984 caseload figures.

TABLE 8

ESTIMATED REVENUES FROM COURT COSTS

<u>Type of Case</u>	<u>Total Cases</u>	<u># Subject to Assessment</u>	<u>Total Revenues</u>
Adult	546,970	361,002	\$1,805,001
Juvenile	30,347	15,174	<u>75,870</u>
Total Revenues from Court Costs:			\$1,880,871

Thus the total revenues estimated to be generated from contributions and court costs which will offset the overall costs of indigent defense services are \$3,304,271. Of course, these projected revenues from both contributions and court costs are based on a number of basic assumptions. Should actual experience differ from these assumptions, for example in terms of the number of defendants able to pay contributions or the level of court costs imposed, then actual revenues would also have to be adjusted.

Calculating the Overall Fiscal Impact

The following tables set forth the estimated 1987 fiscal impact under PD 5289 on the counties and the state compared to projections of the costs of indigent defense in CY 1987 under the present system.

TABLE 9

ESTIMATED CY 1987 INDIGENT DEFENSE
EXPENDITURES WITHOUT PD 5289

<u>Budget Item</u>	<u>State</u>	<u>County</u>	<u>Total</u>
Trial representation		\$9,000,000	\$9,000,000
Appeals		<u>1,125,000</u>	1,125,000
State Public Defender	\$1,500,000		1,500,000
Public Defender Council	<u>300,000</u>		<u>300,000</u>
Totals	\$1,800,000	\$10,125,000	\$11,925,000

TABLE 10

PROJECTED FISCAL IMPACT OF PD 5289 ON STATE
AND COUNTIES IN CY 1987

<u>Budget Item</u>	<u>State</u>	<u>County</u>	<u>Total</u>
Revenues (court costs and contributions)	--	--	\$3,304,271*
Trial representation	\$2,847,864	\$2,847,865	\$5,695,729
State Public Defender (Appeals)	\$2,625,000		\$2,625,000
State Public Defender Commission (Admin.)	\$125,000		\$125,000
Public Defender Council:	<u>\$300,000</u>		<u>\$300,000</u>
Total State & County Expenditures:	\$5,897,864	\$2,847,865	
Total Indigent Defense Expenditures:			\$12,050,000

* We have purposely not attempted to allocate the revenues generated from court costs and contributions from partial indigents between the state and the counties since the allocation of these revenues is clearly a decision to be made by appropriate Indiana officials. Thus, in the above table the projected revenues from these sources are simply subtracted from the total estimated costs for trial representation (\$9,000,000) and the remainder (\$5,695,728) is divided evenly between the state and the counties, to reflect the state's reimbursement of 50% of county expenditures.

A comparison of Tables 9 and 10 reveals the following:

TABLE 11
COMPARISON OF STATE & COUNTY DEFENSE EXPENDITURES
IN CY 1987 WITH & WITHOUT PD 5289

	<u>Without</u> <u>PD 5289</u>	<u>With</u> <u>PD 5289</u>	<u>Difference</u>
State	\$1,800,000	\$5,897,864	+\$4,097,864
Counties	\$10,125,000	\$2,847,865	-\$7,277,135
Revenues	- 0 -	\$3,304,721	+\$3,304,721

If our assumptions are correct for 1987, the counties' share of indigent defense costs in Indiana may well exceed \$10 million under the present system. With the enactment of PD 5289, not only would that figure be dramatically reduced to less than \$3 million, but the state would not be required to absorb the total difference since, under the new bill, additional revenues of more than \$3 million would likely be generated.

CONCLUSIONS

Passage of the proposed bill PD 5289 would result in a number of advantages to the citizens of Indiana including:

- Consistency and uniformity in indigent defense services statewide;
- Flexibility and local autonomy for the counties;
- Accountability with regard to both program operations and expenditures;
- Fiscal relief to the counties in the projected amount of \$4 million for 1987; and
- Alternative sources of funding in the 1987 projected amount of \$3.3 million to offset the overall costs of indigent defense. Thus, the state contribution out of a total budget of over \$12 million would be only \$5.9 million in 1987.

Other Issues for Review

While all of the above advantages are clear from the provisions of PD 5289, there are a number of issues related to the bill that remain unresolved.

First, procedures for the appointment of State Commission and county board members must be decided upon. As noted above, several members of the Interim Study Committee suggested that all appointments should be made by elected officials only.

Secondly, several reviewers of the proposed legislation have suggested that an additional program option should be addressed--namely elected public defenders. While choosing public defenders through this method is not a common practice nationwide, it is done with reported success throughout Florida, and some jurisdictions in Nebraska, Tennessee and in San Francisco,

California. Given that a few policymakers in the counties are interested in establishing elected public defenders, the Indiana General Assembly may want to consider adding that option to those already included in PD 5289, at least for counties with a large population.

A third issue that must eventually be dealt with relates to the practical aspects of the state's reimbursing the counties. The present bill is silent on the issue of how often or when (before or after costs are incurred) such reimbursement would take place. The Ohio statute which served as a model for PD 5289 stipulates that all expenses should be submitted for reimbursement within 60 days of their being incurred; in effect, this actually occurs on a monthly basis. Indiana law should require that expenses be submitted monthly or perhaps, quarterly. It is not advisable, for practical reasons relating to the administration and monitoring of the reimbursement program for the state to pay the counties up front for the estimated costs of defense services.

Fourth, the question of the specific relationship between the newly created Public Defender Commission and the already existing Indiana Public Defender Council remains to be defined. This need not be a complicated task, but is a necessary one in order to set up clear lines of authority and communication among these related agencies.

Finally, and most importantly, the issue of the quality of defense services in Indiana must ultimately be addressed. This particular technical assistance project did not evaluate the

quality of the services provided; however, a number of potential indications of problems were uncovered during the course of our short visit to Indiana and as a result of our prior work in Indiana along with a review of existing studies of the indigent defense system in Indiana. While not absolute indicators of inadequate defense services, the following issues have proven reliable signs of problems with quality in other jurisdictions around the country:

- Lack of public defender independence from the judiciary;
- Lack of early entry into cases;
- Low compensation possibly discouraging the participation of experienced criminal practitioners in the system;
- Lack of support services and money for investigation and experts;
- Extensive reliance on part-time defense attorneys and the increased possibility of conflicts of interest with their private practices;
- Expansion of contract programs without standards for necessary monitoring and supervision or for avoiding emphasizing only cost factors in the negotiation and award of contracts; and
- Lack of controls on the caseloads of individual attorneys.

The projections in this report are based on our best estimates of the current practices in Indiana. For example a 16 percent indigency rate was applied to all misdemeanor cases reflecting the actual practice revealed in our survey of selected Indiana counties, even though that rate is considerably lower than the misdemeanor average of 25 per cent per case elsewhere in the country. Likewise, juveniles are usually found indigent

at a rate of 75 percent, as contrasted to the 23 percent rate discovered in Indiana. Thus, should a subsequent formal evaluation conclude the indigent defense services are presently being provided at a different level in Indiana than the limited data available at the time this report was prepared indicated, or that these services do not fulfill the constitutional and statutory mandates, the cost and caseload projections included herein would have to be adjusted.

Further study is urgently needed to provide basic, reliable information regarding the indigent defense system in Indiana, particularly the types of programs actually providing services, the numbers of indigent cases in which representation is being provided, and the costs of those services. These data are essential for beginning to assess the quality of services presently being provided and for planning for the future provision of defense services. Some progress has already been made; a survey of defense services in the juvenile courts, under the auspices of the Criminal Justice Institute, is ongoing. A comparison survey of adult defense services is expected to get underway in 1986.

Once a public defender commission is established the question of guaranteeing quality defense services should be one of its major priorities. Even if a commission is not established in the near future, our observations indicate that Indiana policymakers should begin to address the quality issues outlined above immediately in order to assure that meaningful representation is being provided to indigent criminal defendants in Indiana.

APPENDIX A

TEXT OF PROPOSED BILL PD 5289

DIGEST

Adds IC 33-9-13 and IC 33-9-14 to: (1) establish an independent office of the state public defender in the judicial branch of government to serve as counsel for indigents in postconviction and appeals; (2) create a seven member public defender commission that appoints the state public defender; (3) create a public defender fund; (4) allow counties to establish three member public defender boards to create county plans for delivery of county defender expenses; (5) provide 50% state reimbursement of county public defender expenses if county plans meet state standards; (6) require an affidavit of indigency from a person seeking public defender services; (7) require payments by clients found to be only partially indigent; and (8) give the public defender commission rulemaking authority to enforce this chapter. Amends IC 33-17-8-2, IC 33-17-8-3, IC 33-17-8-4, and IC 33-17-8-5 to add a \$3 public defender fee to costs in criminal, quasi-criminal, and certain juvenile cases. Repeals IC 33-1-7 and IC 33-9-11, which are superseded. Partially effective July 1, 1986, and July 1, 1987.

A BILL FOR AN ACT to amend the Indiana code concerning public defenders.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-9-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ
2 AS FOLLOWS:

3 Chapter 13. Public Defender Commission.

4 Sec. 1. (a) There is created an Indiana public defender commission (referred
5 to in this article as the commission) to be composed of the following members:

6 (1) Two (2) persons, appointed by the governor, who have demonstrated an
7 interest in the proper functioning of the defender system and who do not both
8 belong to the same political party.

9 (2) Two (2) persons, appointed by the supreme court of Indiana, who do not
10 both belong to the same political party.

11 (3) Two (2) attorneys, appointed by the president of the largest professional
12 organization of attorneys in this state, who do not both belong to the same
13 political party.

14 (4) One (1) attorney appointed by the president of the Indiana Public Defender
15 Association.

16 (b) All terms are for four (4) years and until a successor takes office.

17 (c) The members of the commission shall elect one (1) of the members of the
18 commission as chairman.

19 (d) Judges, law enforcement officers, and court employees are not eligible to
20 serve on the commission.

21 (e) A vacancy occurring among the members of the commission before the
22 expiration of a term shall be filled in the same manner as the original
23 appointments. An appointment to fill a vacancy occurring before the expiration of

1 a term is for the remainder of the unexpired term.

2 (f) Each member of the commission who is not a state employee is not entitled
3 to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is,
4 however, entitled to reimbursement for traveling expenses and other expenses
5 actually incurred in connection with the member's duties, as provided in the state
6 travel policies and procedures established by the department of administration and
7 approved by the state budget agency.

8 (g) The members of the commission shall meet at least quarterly and at such
9 times as called by the chairman or at the request of three (3) commission members.

10 Sec. 2. (a) The commission shall do the following:

11 (1) Appoint the state public defender, without regard to political
12 affiliation.

13 (2) Establish the state public defender's salary.

14 (3) Establish standards for defense services provided under this article,
15 which shall include the following:

16 (A) Determining indigency and eligibility for legal representation.

17 (B) Selection and qualifications of attorneys to represent indigent
18 defendants at public expense.

19 (C) Determining conflicts of interest.

20 (D) Investigative, clerical, and other support services necessary to
21 provide adequate legal representation.

22 (E) Determining minimum and maximum caseloads of public defender offices
23 and contract attorneys.

24 (F) The operation of county public defender offices.

25 (G) Awarding contracts.

26 (H) Availability of counsel for indigents at critical stages before a
27 court determination of indigency.

28 (I) Assessment and collection of fees.

29 (4) Establish fee schedules for payment of attorneys.

30 (5) Adopt a biennial budget for the office of the state public defender and
31 for reimbursing county expenditures under IC 33-9-14-13.

32 (6) Review the comprehensive plans for providing defense services submitted by
33 county public defender boards under IC 33-9-14-2 and determine ninety (90)
34 days before the effective date of the plan whether the plan complies with the
35 rules established by the commission to entitle the county to state funding
36 under IC 33-9-14-13.

37 (7) Make an annual report to the general assembly and the supreme court on the
38 operation of the state public defender's office and the county defender
39 delivery systems.

40 (8) Appoint, employ, or contract with persons to implement this article,
41 including investigating and evaluating county defender plans and services to
42 determine compliance with standards adopted by the commission.

43 (b) The commission may not make any decision regarding the handling of any case
44 nor interfere with the state public defender or any member of the state public
45 defender's staff in carrying out professional duties.

46 (c) The commission may remove the state public defender from office during the
47 term of employment only upon a showing of good cause.

48 Sec. 3. (a) The office of the state public defender is created as an

1 independent office in the judicial department of state government.

2 (b) The state public defender shall administer this article in a just and
3 efficient manner.

4 (c) The term of office of the state public defender is for four (4) years and
5 until the appointment and qualification of a successor.

6 (d) The state public defender, when appointed and while in office, must be an
7 attorney of good standing who has been admitted to the practice of law in Indiana
8 for a period of not less than five (5) years.

9 (e) The public defender shall be provided with a seal of office on which shall
10 appear the words "Public Defender, State of Indiana". The public defender shall
11 have the power to take acknowledgments, administer oaths, and do all other acts
12 authorized by law for notary publics. Each such act shall be attested by the
13 public defender's official seal.

14 Sec. 4. The state public defender shall do the following:

15 (1) Supervise the operation and activities of the office of the state public
16 defender.

17 (2) Provide legal services to indigent persons in:

18 (A) appeals from cases involving convictions of a crime;

19 (B) appeals from cases involving children adjudicated as delinquents;

20 (C) cases involving persons committed to the department of correction in
21 proceedings before the department or parole board, if the right to legal
22 representation is established by law;

23 (D) appeals from other cases where the right to legal representation is
24 established by law, under rules established by the commission; and

25 (E) representation of any person confined in any penal facility of this
26 state or committed to the department of correction due to a criminal
27 conviction or delinquency adjudication who is financially unable to
28 employ counsel, in any postconviction proceeding testing the legality of
29 the person's conviction, commitment, or confinement.

30 (3) Appoint the attorney who represented the client in the trial court to
31 represent the client on appeal if so requested by the trial attorney and the
32 client. An attorney appointed under this subdivision shall be paid by the
33 state public defender according to a fee schedule approved by the state public
34 defender commission.

35 (4) Accept appointments for legal representation from courts under IC
36 33-9-14-12 and provide appropriate legal services.

37 (5) Pay attorneys appointed by the state public defender according to a fee
38 schedule approved by the state public defender commission.

39 (6) Establish and maintain suitable headquarters for the office as the state
40 public defender considers necessary for the proper functioning of the office.

41 (7) Prepare and submit to the commission for its adoption the annual and
42 biennial budget of the office of the state public defender.

43 (8) Assign or appoint attorneys to render legal services according to the
44 policies established by the commission.

45 (9) Make recommendations for amendments to court rules or for legislation, as
46 may be appropriate to improve the criminal justice system.

47 (10) Keep and maintain financial records of all cases handled, develop records
48 for use in the calculation of direct and indirect costs in the operation of

1 the office, and report, at least semiannually, to the commission on all
2 relevant data on the operations of the office, costs, and projected needs.

3 (11) Collect all money due the state for reimbursement for legal services
4 under this chapter and, when advisable, bring actions in court on behalf of
5 the state for the collection of the sums due the office of the state public
6 defender. All money collected or received by the state public defender shall
7 be paid to the treasurer of state for deposit in the public defense fund.

8 (12) Perform all other duties necessary or incidental to the performance of
9 any duties enumerated in this chapter.

10 Sec. 5. (a) This chapter does not require the state public defender to pursue
11 a claim or defense that is not warranted under law and cannot be supported by a
12 good faith argument for an extension, modification, or reversal of law, or that for
13 any other reason is without merit.

14 (b) This chapter does not prohibit an offender from proceeding on the
15 offender's own behalf or otherwise refusing the services of the state public
16 defender.

17 Sec. 6. The state public defender may do the following:

18 (1) Negotiate contracts with the United States or any federal executive,
19 legislative, or judicial branch to provide legal services to persons appearing
20 before the federal district courts located in this state or who are
21 incarcerated in federal custody in this state and to take whatever legal
22 action such representation requires, including appeal or the commencement of
23 any appropriate original actions.

24 (2) Establish divisions within the office for the purposes of the
25 administration of this article.

26 (3) In order to provide legal representation for indigent persons, conduct
27 investigations, obtain expert testimony, take depositions, use other discovery
28 methods, order transcripts, and make all other preparations that are
29 appropriate and necessary to an adequate defense or the prosecution of appeals
30 and other legal proceedings.

31 (4) Seek, solicit, and apply for grants from any source, public or private,
32 for the operation of programs for the defense of indigent persons and receive
33 donations, grants, awards, and similar funds from any lawful source. Money
34 from these sources shall be placed in the public defense fund.

35 (5) Provide representation or assistance in cases at the request of the county
36 public defender, contract attorney, or assigned counsel.

37 (6) Make all the necessary arrangements to coordinate the services of the
38 office with any federal, county, or private program established to provide
39 legal representation to indigent persons.

40 (7) Consult and cooperate with professional groups concerned with the causes
41 of criminal conduct, the reduction of crime, the rehabilitation and correction
42 of persons convicted of crime, the administration of criminal justice, and the
43 administration and operation of the office of the state public defender.

44 (8) Commence actions in the name of the state public defender or any client or
45 group of clients to seek injunctive relief or declaratory judgment on any
46 matter of concern to a person being represented by the office.

47 (9) Contract with or appoint any attorney to provide legal representation to
48 indigent persons entitled to representation by the state public defender.

1 Sec. 7. The state public defender shall appoint or employ, with the consent of
2 the commission, all staff necessary for carrying out the duties of the office,
3 including attorneys, investigators, paralegals, and other employees. Compensation
4 for employees and appointees shall be approved by the commission.

5 Sec. 8. (a) A determination of indigency for persons referred to or contacting
6 the state public defender shall be made upon initial contact or at the earliest
7 time circumstances permit and in accordance with the rules adopted by the
8 commission under this chapter.

9 (b) The representative of the state public defender making a determination of
10 indigency shall investigate the financial status of each person to be represented,
11 at the earliest time circumstances permit, and may require the person to disclose
12 the records of public or private income sources and property, otherwise
13 confidential, that may be of aid in determining indigency. The state public
14 defender may obtain information from any public record contained in any office of
15 the state, a political subdivision of the state, or an agency of the state without
16 payment of any fees ordinarily required by law.

17 (c) If a determination of indigency cannot be made before the time when the
18 first services are to be rendered, the state public defender shall render these
19 services on a provisional basis. If the state public defender subsequently
20 determines that the person receiving the services is ineligible, the state public
21 defender shall notify the person of the termination of services, subject to court
22 ordered reinstatement.

23 (d) All persons determined to be indigent in full or in part must sign an
24 affidavit swearing or affirming under penalty of perjury that all income and assets
25 reported are complete and accurate. In addition, the person must swear or affirm
26 in the affidavit to report immediately any change in financial status to the office
27 of the state public defender.

28 (e) If found to be indigent in part, the person shall be informed promptly of
29 the extent to which payment is expected for counsel and whether payment shall be
30 made in the form of a lump sum payment or periodic payments. The payment and
31 payment schedule shall be set forth in writing.

32 (f) Any person determined not to be indigent or to be indigent only in part may
33 request judicial review of the state public defender's determination in the court
34 having jurisdiction of the case in which the person is requesting representation.

35 Sec. 9. (a) The files maintained by the office of the state public defender
36 that relate to the handling of any case are confidential and are not open to
37 inspection by any person unless authorized by law, court decree, the commission, or
38 the state public defender.

39 (b) All communications between the individual defendant and any person in the
40 office of the state public defender or engaged by the state public defender are
41 fully protected by the attorney-client privilege to the same extent as though
42 counsel had been privately engaged.

43 Sec. 10. (a) The public defense fund is established to receive court fees or
44 other revenues for specific uses. The fund shall be administered by the state
45 public defender.

46 (b) The treasurer of state shall invest the money in the fund not currently
47 needed to meet the obligations of the fund in the same manner as other public funds
48 may be invested.

1 (c) Money in the fund at the end of a particular fiscal year does not revert to
2 the state general fund.

3 SECTION 2. IC 33-9-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ
4 AS FOLLOWS:

5 Chapter 14. County Public Defender Boards.

6 Sec. 1. (a) The county council in any county may adopt an ordinance
7 establishing a county public defender board consisting of three (3) members. One
8 (1) member shall be appointed by the county council. One (1) member shall be
9 appointed by the circuit court judge of the county. One (1) member shall be
10 appointed by the president of the largest county bar association in the county.

11 (b) Of the initial appointments made to the county public defender board, the
12 appointment by the county council shall be for a term of one (1) year, the
13 appointment by the circuit court judge shall be for a term of two (2) years, and
14 the appointment by the president of the county bar association shall be for a term
15 of three (3) years. Thereafter, terms of office are for three (3) years. Each
16 member shall hold office from the date of appointment until the end of the term for
17 which the member was appointed. Any member appointed to fill a vacancy occurring
18 before the expiration of the term shall hold office for the remainder of the term.
19 Any member shall continue in office subsequent to the expiration date of that
20 member's term until a successor takes office.

21 (c) The members of the board shall choose as chairman one (1) of the board
22 members. Meetings shall be held at least quarterly and at such other times as
23 called by the chairman or any two (2) members of the county public defender board.
24 Members of the board shall serve without compensation but shall be reimbursed for
25 actual expenses incurred while engaged in the duties of the board.

26 (d) The county council may terminate the county public defender board upon
27 giving at least ninety (90) days notice in writing to the commission.

28 Sec. 2. (a) The county public defender board shall prepare a comprehensive
29 plan for providing defense services to indigent persons. Upon review and approval
30 by the county council, the plan shall be submitted to the commission one hundred
31 eighty (180) days before the effective date of the plan for review and approval by
32 the commission under IC 33-9-13-2.

33 (b) The plan may include the following delivery plans or combinations thereof:

- 34 (1) County public defender office.
35 (2) Joint county public defender office.
36 (3) Contract with an attorney, group of attorneys, or private organization.
37 (4) Provision for an assigned counsel system of panel attorneys, under rules
38 established by the commission.

39 (c) The plan shall include provision of services to those found to be indigent
40 in part, who shall be required to pay part of the cost of counsel. Such persons
41 shall be promptly informed of the extent to which payment is expected and whether
42 the payment shall be made in a lump sum or in periodic payments. The plan shall
43 provide for collection of such payments. All money collected under this subsection
44 shall be deposited in the county general fund to be appropriated for any necessary
45 expenses of the county public defender.

46 Sec. 3. (a) If a county public defender office is established, the board shall
47 do the following:

- 48 (1) Recommend to the county council an annual operating budget for the office.

1 (2) Make an annual report to the county council and the commission on the
2 operation of the county public defender office, including information on
3 finances and costs and any other data and information requested by the
4 commission.

5 (3) Cooperate with the commission in maintaining the standards established by
6 rules of the commission under this chapter.

7 (4) Appoint the county public defender.

8 (b) The county public defender shall be appointed for a term of up to four (4)
9 years and may be reappointed. The county public defender may be removed from
10 office during the term only for good cause. The county public defender must be an
11 attorney admitted to the practice of law in Indiana at least two (2) years before
12 the appointment.

13 Sec. 4. The county public defender shall do the following:

14 (1) Maintain an office as approved by the county council upon recommendation
15 of the county public defender board.

16 (2) Hire and supervise staff necessary, as positions are approved by the
17 county council and recommended by the board, to perform the services of the
18 office.

19 (3) Keep and maintain financial records of all cases handled by the office and
20 report at least semiannually to the county public defender board and to the
21 commission on all relevant data on the operations of the office, costs, and
22 projected needs.

23 Sec. 5. (a) The county public defender shall provide legal representation to
24 indigent persons in cases where the right to counsel is recognized by law.

25 (b) Following appointment by the court to represent an indigent person, or
26 upon appointment pursuant to the rules of the court, the county public defender
27 shall provide the legal representation authorized by this chapter at every stage of
28 the proceedings following arrest, detention, service of summons, or indictment,
29 whichever occurs first.

30 (c) The county public defender may request the state public defender to
31 provide representation or assistance in any case if the county public defender
32 decides it is in the interests of justice.

33 Sec. 6. (a) The county councils in two (2) or more neighboring counties may
34 establish a joint county public defender board. The joint board shall have three
35 (3) members from each county.

36 (b) The councils shall agree on a specific date for the joint county public
37 defender board to be established, on which date the appointments of all members
38 shall take effect.

39 (c) The appointments to the joint county public defender board shall be made
40 by each county according to the specifications in section 1 of this chapter.

41 Sec. 7. (a) The agreement of the county councils establishing a joint county
42 public defender board must provide for the allocation of the proportion of expenses
43 to be paid by each county, which may be based upon population, number of cases, or
44 other factors as the county councils determine to be appropriate. The county
45 councils may amend their agreement from time to time to provide for a different
46 allocation of the proportion of expenses to be paid by each county.

47 (b) The agreement must designate the county auditor of the county with the
48 greatest population as the custodian of funds of the joint county public defender

1 board organized under section 6 of this chapter.

2 Sec. 8. (a) The county council of any county participating in a joint county
3 public defender board may withdraw from the agreement. A withdrawal is not
4 effective until at least ninety (90) days after the council has notified the
5 commission and the joint county public defender board in writing of the termination
6 date. The failure of a county council to approve an annual operating budget for
7 the joint county public defender office constitutes a notice of withdrawal by the
8 county from the agreement, effective January 1 of the succeeding year.

9 (b) Members of the joint county public defender board who are residents of a
10 county withdrawing from an agreement are considered to have resigned their
11 positions upon the completion of the withdrawal procedure provided in this section.
12 Vacancies thus created shall not be filled.

13 (c) If two (2) or more counties adjacent to each other remain parties to the
14 agreement made under section 6 of this chapter after the withdrawal, the county
15 councils of the remaining counties may agree to continue the operation of the joint
16 county public defender office and to reallocate the proportionate share of expenses
17 to be paid by each participating county.

18 (d) The joint county public defender board shall appoint the joint county
19 public defender and may remove that public defender from office during the term
20 only for good cause.

21 (e) The joint county public defender board shall:

22 (1) recommend to the county councils an annual operating budget; and

23 (2) make an annual report to the county councils and the commission on the
24 operation of the joint county public defender office, including complete and
25 detailed information on finances and costs, and such other data and
26 information as are requested by the commission.

27 Sec. 9. The joint county public defender has the same duties and powers as a
28 county public defender under this chapter.

29 Sec. 10. (a) The county public defender board may contract with an attorney,
30 a group of attorneys, or private organization to provide legal representation under
31 this chapter.

32 (b) Subject to the approval of the county council, the county public defender
33 board shall establish the amount of the contract under the rules established by the
34 commission.

35 (c) The county council shall, upon approving the amount of the contract,
36 appropriate an amount sufficient to meet the obligations of the contract.

37 Sec. 11. (a) The county public defender board may establish an assigned
38 counsel system of panel attorneys to provide legal representation under this
39 chapter.

40 (b) The county public defender board shall create and maintain a list of
41 attorneys qualified to represent indigent defendants under the rules adopted by the
42 commission.

43 (c) Upon the determination by a court that a person is indigent and entitled to
44 legal representation at public expense, the court shall appoint an attorney to
45 provide such representation from the list maintained by the county public defender
46 board.

47 (d) An attorney appointed to provide representation under this section may
48 request authorization from the judge hearing the case for expenditures for

1 investigative, expert, or other services necessary to an adequate defense.

2 (e) An attorney appointed to provide representation under this section shall
3 receive compensation and reimbursement for expenses by submitting a voucher in a
4 form approved by the commission and the state board of accounts to the court. Upon
5 approval of the voucher by the judge hearing the case, the voucher shall be
6 presented to the county auditor who shall process the claim as other claims against
7 county funds are processed.

8 (f) An attorney appointed to provide representation under this section shall
9 report to the county public defender board, upon completion of representation,
10 information regarding the case disposition in a form approved by the commission.

11 Sec. 12. (a) This chapter does not prevent a court from appointing counsel
12 other than counsel provided for under the county public defender board's plan for
13 providing defense services to indigent persons. A court may also appoint counsel
14 to assist counsel provided for under the county public defender board's plan as
15 co-counsel when the interests of justice so require. Expenditures by a county for
16 counsel not provided for under the county public defender board's plan are not
17 subject to state reimbursement under section 13 of this chapter.

18 (b) If the judge of a court having criminal jurisdiction determines that an
19 attorney provided for under the county public defender board's plan is not
20 qualified or available to represent a person charged in the court with a criminal
21 offense and eligible for representation at public expense, or upon a determination
22 by the judge that in the interests of justice an attorney other than the one
23 provided for by the county defender board's plan should be appointed, the judge may
24 make a written request to the state public defender to provide a qualified attorney
25 for the defense of the person, attaching to the request a copy of the information
26 or indictment. Expenditures for representation under this subsection shall be paid
27 by the county according to a fee schedule established by the commission and are
28 eligible for state reimbursement under section 13 of this chapter.

29 Sec. 13. (a) The county public defender board shall make a written report to
30 the county council that shall be audited by the county auditor. The county
31 council, after review and approval of the audited report, may then certify it to
32 the auditor of state for reimbursement. Fifty percent (50%) of the total of each
33 county's net expenditures for defense services under this chapter shall be paid by
34 the state on the order of the county auditor. Net expenditures are the gross
35 expenditures for defense services less the amounts received by the county under
36 section 2(c) of this chapter.

37 (b) If a county's public defender services fail to meet the standards
38 established by rules of the commission, the commission shall notify the county
39 public defender board and the county council of the failure to comply with its
40 rules. Unless the county public defender board corrects the deficiencies to comply
41 with the rules within ninety (90) days after the date of the notice, the county's
42 right to reimbursement from the state as provided in subsection (a) terminates at
43 the close of that fiscal year. If correction is not made, the commission shall
44 certify to the auditor of state that the right of reimbursement is terminated at
45 the close of that fiscal year.

46 Sec. 14. (a) The county public defender, contract attorney, or counsel
47 appointed by the court may not be a partner or employee of any prosecuting
48 attorney.

1 (b) City attorneys, law enforcement officers, judges, and court employees are
2 not eligible to serve on any county public defender board.

3 SECTION 3. IC 33-17-8-2, AS AMENDED BY P.L.167-1984, SECTION 83, IS AMENDED TO
4 READ AS FOLLOWS: Sec. 2. The clerk shall collect the following fees upon
5 conviction for an offense in the circuit or superior court, except in cases on the
6 minor offenses or violations docket:

7 (1) A judicial fee of nine dollars (\$9), to be deposited pursuant to IC
8 33-17-11-1.

9 (2) A prosecuting attorney's fee of twenty dollars (\$20) or thirty-six dollars
10 (\$36), as prescribed by IC 33-17-11-3.

11 (3) A fee of ten dollars (\$10), which belongs to the county, for each felony
12 or misdemeanor count upon which the defendant is convicted.

13 (4) If the defendant is convicted and placed on probation, an initial
14 probation user's fee and monthly user's fee in the amount set by the court
15 under IC 35-38-2-1.

16 (5) Witness fees as prescribed by IC 33-17-12.

17 (6) The document fees applicable under IC 33-17-10, which belong to the
18 county.

19 (7) In each case involving a jury, the applicable fee prescribed by IC
20 33-17-11-6.

21 (8) A public defender fee of three dollars (\$3), to be deposited in the fund
22 established by IC 33-9-13-10.

23 In addition, the clerk shall charge applicable fees for service of process under IC
24 33-17-7.

25 SECTION 4. IC 33-17-8-3, AS AMENDED BY P.L.167-1984, SECTION 84, IS AMENDED TO
26 READ AS FOLLOWS: Sec. 3. The clerk shall collect the following fees upon
27 conviction for an offense or upon entry of judgment in a case within the infraction
28 or ordinance violation jurisdiction of a county court or a case on the minor
29 offenses or violations docket of a circuit or superior court:

30 (1) A state docket fee of five dollars (\$5).

31 (2) A county docket fee of five dollars (\$5).

32 (3) A prosecuting attorney's fee of twenty dollars (\$20) or thirty-six dollars
33 (\$36), or a municipal prosecutor's fee of twenty dollars (\$20), as prescribed
34 by IC 33-17-11-3 and IC 33-17-11-4.

35 (4) A judicial fee of one dollar (\$1), to be deposited pursuant to IC
36 33-17-11-1.

37 (5) In infraction and ordinance violation cases, a judicial salaries fee in
38 the amount prescribed by IC 33-17-11-2.

39 (6) If the defendant is convicted of an offense and placed on probation, an
40 initial probation user's fee and monthly user's fee in the amount set by the
41 court under IC 35-38-2-1.

42 (7) Witness fees as prescribed by IC 33-17-12.

43 (8) The document fees applicable under IC 33-17-10, which belong to the
44 county.

45 (9) In each case involving a jury, the applicable fee prescribed by IC
46 33-17-11-6.

47 (10) A public defender fee of three dollars (\$3), to be deposited in the fund
48 established by IC 33-9-13-10.

1 In addition, the clerk shall charge applicable fees for service of process under IC
2 33-17-7.

3 SECTION 5. IC 33-17-8-4, AS AMENDED BY P.L.167-1984, SECTION 85, IS AMENDED TO
4 READ AS FOLLOWS: Sec. 4. The clerk shall collect the following fees in municipal
5 court upon conviction for an offense or upon entry of judgment in proceedings to
6 enforce an ordinance or a statute defining an infraction:

7 (1) A docket fee of fifteen dollars (\$15), which shall be deposited in the
8 city general fund in ordinance violation cases and in the county general fund
9 in criminal and infraction cases.

10 (2) A prosecuting attorney's fee of twenty dollars (\$20) or thirty-six dollars
11 (\$36), or a municipal prosecutor's fee of twenty dollars (\$20), as prescribed
12 by IC 33-17-11-3 and IC 33-17-11-4.

13 (3) A judicial fee of nine dollars (\$9), to be deposited pursuant to IC
14 33-17-11-1.

15 (4) In infraction and ordinance violation cases, a judicial salaries fee in
16 the amount prescribed by IC 33-17-11-2.

17 (5) If the defendant is convicted of an offense and placed on probation, an
18 initial probation user's fee and monthly user's fee in the amount set by the
19 court under IC 35-38-2-1.

20 (6) Witness fees as prescribed by IC 33-17-12.

21 (7) The document fees applicable under IC 33-17-10, which belong to the
22 county.

23 (8) In each case involving a jury, the applicable fee prescribed by IC
24 33-17-11-6.

25 (9) A public defender fee of three dollars (\$3), to be deposited in the fund
26 established by IC 33-9-13-10.

27 In addition, the clerk shall charge applicable fees for service of process under IC
28 33-17-7.

29 SECTION 6. IC 33-17-8-5, AS AMENDED BY P.L.2-1984, SECTION 12, IS AMENDED TO
30 READ AS FOLLOWS: Sec. 5. The clerk shall collect the following fees in
31 proceedings on a petition alleging that a child is a delinquent child as follows:

32 (1) The juvenile court may charge a delinquent child and his or the child's
33 parent, guardian, or custodian a docket fee of thirty dollars (\$30).

34 (2) Notwithstanding subdivision (1), in a county served by a juvenile court
35 referee who:

36 (A) was appointed to serve as a full-time referee; and

37 (B) does not practice law during his term as referee;

38 the court shall charge a delinquent child and his or the child's parent,
39 guardian, or custodian a docket fee of thirty dollars (\$30) and a judicial
40 salaries fee of nine dollars (\$9). The judicial salaries fee shall be
41 collected and forwarded like other judicial salaries fees under IC 33-17-11-2
42 and shall be deposited in the general fund of the state.

43 (3) The juvenile court shall charge a delinquent child and the child's parent,
44 guardian, or custodian a public defender fee of three dollars (\$3), which
45 shall be deposited in the fund established by IC 33-9-13-10.

46 SECTION 7. THE FOLLOWING ARE REPEALED: IC 33-1-7; IC 33-9-11.

47 SECTION 8. The person who was appointed public defender under IC 33-1-7-1
48 continues in that capacity until the commission established by IC 33-9-13-2, as

1 added by this act, appoints a successor state public defender.

2 SECTION 9. (a) County public defender boards that establish county defender
3 offices or contract for services under this act shall, for the initial term of
4 employment and to the extent possible, employ and contract with those attorneys:

5 (1) employed by county public defender offices as of June 30, 1986; or

6 (2) contracting to provide services under IC 33-9-10 as of June 30, 1986.

7 (b) Nothing in this act affects the rights and obligations of parties to
8 contracts made under IC 33-9-10.

9 SECTION 10. (a) The initial appointments to the commission established by IC
10 33-9-13-1, as added by this act, are to take effect July 1, 1986.

11 (b) One (1) of the initial members of the commission appointed by the governor
12 under IC 33-9-13-2, as added by this act, shall serve for a term of two (2) years
13 and the other for a term of four (4) years, as designated by the appointing
14 authority at the time of the appointment. One (1) of the initial members of the
15 commission appointed by the supreme court shall serve for a term of two (2) years
16 and the other for a term of four (4) years, as designated at the time of the
17 appointment. One (1) of the initial members of the commission appointed by the
18 president of the largest professional organization of attorneys in this state shall
19 serve for a term of two (2) years and the other for a term of four (4) years, as
20 designated at the time of the appointment. The initial member of the commission
21 appointed by the president of the Indiana Public Defender Association shall serve
22 for a term of four (4) years.

23 SECTION 11. (a) Except as provided in subsection (b), this act takes effect
24 July 1, 1987.

25 (b) SECTIONS 3, 4, 5, 6, and 10 of this act and IC 33-9-13-1, as added by this
26 act, take effect July 1, 1986.

INTRODUCTION

During the upcoming 1987 Session of the Indiana General Assembly, the State's lawmakers may consider a bill which proposes to make significant changes in the system for overseeing and funding the provision of indigent defense services in the state's 92 counties. In 1985 the Legislative Interim Study Committee of Probation Services and Indigent Counsel reviewed defense services to indigents and legislation endorsed by the Indiana State Bar Association, the Indiana Public Defender Council and the Indiana Public Defender Association. No bill was submitted in the 1986 legislative session because it was a short session in the middle of the budgetary biennium.

The Committee strongly endorsed the concepts of this proposed legislation. Among other things, PD 5289 would create an Indiana State Public Defender Commission to set standards for and approve county defense programs and would also provide for reimbursement by the state of 50 percent of the counties' expenditures for indigent defense. This report is intended to provide the essential background information necessary for informed deliberations on the merits of the bill.

The following introductory sections review Indiana's judicial system, the present system for providing defense services in Indiana, the systems for providing defense services around the nation, national trends in the provision of these services, and a comparison of Indiana's defense system with the rest of the nation. Finally, the history of attempts to improve defense services in Indiana is reviewed and the technical assistance project culminating in this report is described. The second portion of the report analyzes the proposed legislation and discusses some of its major provisions, particularly those that have financial implications. The reasons why PD 5289 is necessary to

improve the provision of defense services in Indiana are also outlined in this second part of the report. The third part of the report discusses the fiscal impact of the bill, providing an initial estimate of the costs, to both the state and the counties, of an indigent defense system incorporating the changes proposed in PD 5289, based on the limited data available.

Indiana's Judicial System

The Indiana Supreme Court handles direct appeals only in those criminal cases where a penalty of death or a sentence of more than ten years is imposed. (Ind. Court, Art. 7, Sec. 4) The Court has original jurisdiction over matters concerning the conduct of the bar and the bench. The Court may issue any writ necessary to exercise its appellate jurisdiction and, in all criminal appeals, may review any question of law or review and revise the sentence imposed by the trial court. The Court has 5 justices appointed by the Governor after nomination by a judicial nominating commission. (After two years, justices come before the electorate on a "Yes-No" retention ballot; if successful, they serve ten-year terms.)

The Court of Appeals has no original jurisdiction, but pursuant to Supreme Court rules has appellate jurisdiction in all criminal cases (including sentencing review) except for those cases noted above which may be appealed directly to the Supreme Court. (Ind. Rules of App. Proc., Rule 4) The court is also empowered to hear interlocutory appeals. The 12 judges serving 4 "Districts" are selected in the same manner and serve the same terms as Supreme Court justices.

The Circuit Courts in Indiana are by statute vested with original jurisdiction in all civil and criminal matters, except when exclusive

jurisdiction is conferred upon other courts of the same county. (I.C. 33-4-4-3) They also have appellate jurisdiction over appeals from the city and town courts. There are 89 circuit courts throughout the state (three circuits are made up of two counties each). In 21 counties the circuit court maintains small claims and minor offenses divisions, while in the remainder of the counties such cases are handled in the Superior or County Courts. Judges of the Circuit Court are elected every 6 years.

The Superior Courts are also courts of general jurisdiction in criminal matters, with the same appellate jurisdiction as the Circuit Courts. Thirteen Superior Courts have concurrent jurisdiction with the circuit court, 14 have concurrent jurisdiction in all but probate and juvenile matters, and six have exclusive jurisdiction over juvenile and probate and concurrent jurisdiction with Circuit Court in all other cases. In Marion County, all criminal cases are heard in the Superior Courts, with the exception of those brought in Marion County Municipal Court. As of December 31, 1984, there were 105 Superior Courts serving 43 counties. Superior Courts are created individually by the General Assembly as local needs dictate. For the most part, judges of the Superior Court are also elected to 6-year terms by the voters of Indiana.

County Courts began operating in 1976 in place of the disappearing Justice of the Peace Courts. The County Court has original and concurrent jurisdiction in Class D (less serious) felonies, misdemeanors and infraction cases, and violations of local ordinances, along with jurisdiction over certain civil matters in which the debt or damage does not exceed \$10,000. The court may conduct preliminary

hearings and set bail in felony cases. There are 60 county courts, served by 57 judges elected for six-year terms.

The Marion County Municipal Court replaces the County Court in Indianapolis and has concurrent jurisdiction with the Criminal Court in all Class D felonies, misdemeanors, infractions, and local ordinance violations. The court also has jurisdiction to conduct probable cause hearings in felony cases and to bind over to the Superior Court when probable cause is found. The court also has jurisdiction over civil matters in which the debt or damage claimed does not exceed \$20,000 and involuntary mental commitments, among others. There are 15 judges of the Marion County Municipal Court, all of whom are nominated by a local nominating commission and then appointed by the Governor for a four-year term.

Overview of Indigent Defense Services in Indiana

Indigent defense services in Indiana are presently organized and funded entirely at the county level, with the exception of the services provided by the State Public Defender. This office represents on demand indigent convicted adults and indigent adjudicated delinquents committed to Department of Correction facilities in challenges to their convictions, sentences, or adjudications after the time for appeal has expired. The office also provides trial level representation when appointed and compensated by the county. In contrast to the post-conviction relief matters handled by the State Public Defender, direct appeals in the state are handled by court-appointed counsel and paid for by the counties. However, the trial court may appoint the State Public Defender and pay for services pursuant to a fee schedule established by the Indiana Supreme Court.

State funding is also provided in support of the Indiana Public Defender Council, which was originally established under an LEAA grant, but is now a state agency. The Council provides research, training, and technical assistance to attorneys representing indigent defendants, but no direct representation. According to the statute establishing the Council (I.C. 33-4-12), it has five main responsibilities:

- 1) aid attorneys who defend indigents;
- 2) prepare manuals of procedure;
- 3) help prepare trial briefs, forms and instructions;
- 4) conduct resesarch; and
- 5) maintain contact with other governmental agencies which deal with criminal defense.

By statute, (I.C. 37-9-10) judges of the courts of criminal jurisdiction in Indiana are authorized to contract with any attorney or group of attorneys for the defense of indigents, except counties with a population of 400,000 or more. There is currently no statutory authority for the public defender programs existing in the two counties (Lake and Marion) with populations in excess of 400,000.

According to a recent survey of county programs by the Indiana Public Defender Council, there are currently 55 public defender, 63 assigned counsel and 57 contract programs in the state. (These figures add up to greater than 92 because many counties utilize a mix of systems to provide indigent criminal representation in all courts in the county.) In 32 counties the predominant method of defense service delivery is assigned counsel while in the remaining 60 counties public defender or contract programs predominate.

Some confusion exists over the distinction between a "public defender" and a "contract" program, making it difficult to accurately assess the actual procedures for providing indigent defense across the state. Many programs that are called "public defender" in Indiana do not fit the mold of what is typically thought of when that term is used: A salaried staff of full-time or part-time attorneys, with a fully-equipped office rendering services through a public or private nonprofit organization. Instead, many "public defender offices" in Indiana counties consist of one or more attorneys contracting annually on an individual basis with a judge or judges to provide defense services. Usually, attorneys only serve part-time as public defenders. Under such circumstances, attorneys most often operate out of their private offices, although in some courts, desk space is made available in the courthouse. Such programs might more appropriately be designated contract programs. Thus, it is difficult to get an idea of the actual procedures for providing indigent defense representation simply by looking at what the programs call themselves--closer scrutiny is required to develop an accurate sense of individual program characteristics.

One of the more unique aspects of the Indiana indigent defense system is that, by statute, public defenders and contract attorneys are for the most part appointed by each individual judge to serve in his or her courtroom. This practice has been the subject of controversy for the past decade, which has resulted in redefinition of that authority in certain jurisdictions. For example, in several counties surveyed, the judge appoints a chief public defender, who then hires a staff of deputies. Elsewhere, committees of judges (and attorneys

in some cases) appoint the attorneys. In one county a public defender advisory board consisting of attorneys and lay people provide the judges with a list of suitable candidates for public defenders from which they make appointments. In a few counties, while the judges appoint individual attorneys to serve as public defenders, the attorneys are not assigned to a specific courtroom but may be rotated through the various criminal courts in the county on an as-needed basis. Generally, this occurs only where there is a Chief Public Defender or some other administrative personnel to monitor the courts' needs and assign attorneys as necessary. The procedures in each county for choosing and appointing counsel range from the very simple to incorporating complex formulas, with no state standards or guidelines governing them.

Systems for Providing Defense Services Around the Nation

While the U.S. Supreme Court has mandated the right to counsel for indigent defendants in felony, misdemeanor, and juvenile cases, and has set certain guidelines for when counsel must be appointed, it has left the implementation of a system for indigent defense to the 50 states. It is up to the states to determine which type of programs are to be used and how they are to be funded. Needless to say, this results in a wide variety of programs and systems across the country. Two recent studies have contributed greatly to a better understanding of the characteristics of these myriad systems: 1) the American Bar Association's 1982 report on Criminal Defense Services to the Poor, by Professor Norman Lefstein; and 2) The National Criminal Defense

Systems Study published in May of 1984, conducted by Robert L. Spangenberg, et al. of the then Criminal Defense Group at Abt Associates Inc., for the U.S. Department of Justice, Bureau of Justice Statistics. Information from these sources, and updated information that we are constantly receiving from contacts in the field are summarized in the following outline of the various levels of organization and types of indigent defense systems in the United States.

Level of Organization

- Indigent defense services are presently organized on a statewide basis in 17 states: Alaska, Colorado, Connecticut, Delaware, Hawaii, Kentucky, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, West Virginia, Wisconsin and Wyoming.
- 3 states have a central organization but are not responsible for providing services throughout the entire state: Nevada, Ohio and Kansas.
- Half of the states place the responsibility for providing defense services with the counties.
- 2 states organize services on a judicial district or circuit level: Florida and Minnesota.
- Several states are organized on both a county and judicial district basis: Arkansas, Georgia, Louisiana, and North Carolina.

Type of System

- Public defender programs were utilized by 34% of the counties across the United States in 1981-82.
- In 22 states, public defender programs are currently the predominant system of delivery. There is at least one public defender program in every state but Maine and North Dakota.
- 60% of all counties in the nation were served by assigned counsel programs in 1981-82, but they serve only about one third of the population because they were found most frequently in the smaller counties.

- Approximately 25% of all assigned counsel programs are coordinated, that is they have an administrative component and a set of rules and guidelines governing the appointment and processing of cases handled by the private bar.
- Assigned counsel programs predominate in 17 states. Today Maine is the only state which relies exclusively on private assigned counsel.
- In 1981-82, contract programs existed in 6% of the counties, most clustered in a few states. At that time, 32 states had no contract programs at all.
- Use of contract programs has grown substantially and in at least two states--North Dakota and Washington--those states can be characterized as predominantly contract states at the present time. The growth of contracts has been substantial nationwide--particularly in the area of providing backup to Public Defenders in conflict cases.
- A number of states provide indigent representation through a mixed system such that no one type of program predominates: Arizona, Idaho, Indiana, Massachusetts, Michigan, Minnesota, New Mexico, Oregon and Utah. (Although Massachusetts and New Mexico are organized on a statewide basis, a variety of programs is utilized in each state to provide direct representation to indigents.)

National Trends in the Provision of Indigent Defense Services

We have observed a number of general trends in the provision of indigent defense services since the National Criminal Defense Systems Study was completed. The most significant of these trends include:

- There has been a move towards state funding of indigent defense services. Since 1982, when 17 states funded indigent defense services, six more states have passed legislation providing for full state funding (Missouri, Oregon, Delaware, and Kentucky, Delaware and Iowa) for a total of 23 states. An additional 10 states support their programs with both state and county funds (Florida, Kansas, Montana, Nevada, New York, North Dakota, Ohio, South Carolina, Tennessee and Wyoming). Finally, a number of states have given consideration over the past several years to providing some level--or increasing

the already existing level--of state funding including Indiana (the others are Georgia, Nebraska, Washington, and South Carolina). Legislation that has been enacted in Iowa provides for state takeover of the costs of indigent defense in 1987.

- There has been an increased reliance in recent years on establishing independent indigent defense commissions or boards at the state level to oversee the provision of services throughout the state. Since 1982, when there were 13 permanent commissions (all part of statewide public defender programs except Ohio), an additional 6 states have established such commissions (Kansas, North Dakota, Oregon, Massachusetts, Missouri, and West Virginia). In addition, consideration has been given to similar proposals over the last three years in five states, including Indiana (the others are Washington, Maine, Virginia, and South Carolina). These commissions vary considerably in terms of how they are constituted and their responsibilities, which are discussed in greater detail later in this report.

One important characteristic of several of the more recently established commissions is that they preserve local autonomy through county option provisions, with the state agency reviewing and certifying that individual county plans for providing defense services meet state standards. This is the type of system that is proposed for Indiana.

- There has been an increased emphasis on cost containment procedures, such as establishing formal indigency guidelines to assure only the truly indigent receive counsel at public expense.
- There has also been a concerted effort to identify and take advantage of alternative sources of revenues, rather than annual state appropriations, such as collecting from the defendants (either through contributions up front or recoupment after disposition) and imposing court costs on defendants in a wide range of cases.
- Indigent caseloads around the nation have been increasing at a steady rate of between 5 and 10% for the last several years.

Comparing Indiana with the Rest of the Nation

According to the national survey conducted in 1981-1982, Indiana was ranked 45th in the nation with a per capita cost for

indigent defense services of only \$1.01. According to our estimates based on the limited data available from the State Court Administrator's Office, in 1985 that figure has increased to \$1.48 (including the amount spent by the state on the state public defender and the Indiana Public Defender Council). In terms of the average cost per case, in 1982 Indiana ranked 41st at \$131 per case. In 1984, the cost per case (based on county expenditures alone and caseload data reported by the State Court Administrator's Office) is \$138. This slight increase fails to bring the cost per case in Indiana anywhere near the 1982 national average of \$196, much less the currently estimated nationwide average cost per case of \$220. Even with the modest improvements that have occurred in Indiana, the gap between it and the other states has actually widened since 1982 as a result of substantial increases in defense expenditures in a number of states. Indiana fares little better when compared to states with similar demographic characteristics. The following table compares costs and cost per case in states with populations similar to Indiana. An analysis of this table reveals that once again Indiana falls in the lower middle range in terms of both per capita and per case expenditures. Even using the high figure of \$1.48 for its per capita cost (based on the total of state and county expenditures in 1984) Indiana lags 82 percent behind the next highest state, Massachusetts, at \$2.70. Indiana's cost per case expenditures in 1984 of \$165 fall 41 percent behind the \$264 expended per case in the state of Wisconsin.

TABLE 1
A COMPARISON OF COSTS AND COSTS/CASES IN STATES WITH COMPARABLE POPULATION

STATE	1980 POPULATION	TYPE OF SYSTEM	WHO FUNDS?	EXPENDITURES			FY 1982 COST CASE	1985 COST CASE	% INCREASE DECREASE
				FY 1982	FY 1985	FY 1985 PER CAPITA			
WISCONSIN	4,706,000	State Public Defender	State	\$13,350,200	\$17,814,474	\$3.79	\$263.56	+14.6%	
NORTH CAROLINA	5,882,000	Mixed A/C & P/D	State & County	\$11,004,038	\$12,673,701 (FY 1984)	\$2.15	\$202.27	+ 8.2%	
MARYLAND	4,217,000	State P/D	State	\$10,270,310	\$15,139,614	\$3.38	\$183.13	+39.8%	
MISSOURI	4,917,000	State P/D & Contracts	State & b County	\$4,408,413	\$5,800,000	\$1.18	\$173.13	+25.5%	
MASSACHUSETTS	5,737,000	State Ad- ministered; Mixed A/C and P/D	State	\$13,092,198	\$15,872,588	\$2.70	\$178.00	- 0 -	
TENNESSEE	4,591,000	Mixed A/C, P/D & Contract & Juv. & (Misc.)	State (fel.); County (Juv. & (Misc.))	\$3,732,880	\$5,651,070	\$1.23	\$143.41	- 0 -	
GEORGIA	5,463,000	Mixed P/D & A/C	Counties	\$5,672,712	\$6,949,072	\$1.27	\$136.32	+ 4.1%	
INDIANA	5,490,000	Mixed P/D & A/C	Counties	\$5,551,430	\$6,763,627 (CY 1984)(d) (\$8,083,394)	\$1.22 (\$1.48)	\$138.00 (\$165)	+ 1.0%	
VIRGINIA	5,347,000	A/C by County w/ 4 Pilot P/D's	State	\$8,289,380	\$7,900,767	\$1.48	\$109.97	-1.0%	

(a) Cost figure does not include office expenses, which are paid for by the counties.
 (b) Office expenses & utilities (except for phone) covered by counties; thus, overall cost estimate is low.
 (c) Based on trial court cases only; no general session courts caseload data available.
 (d) Figures in parentheses include state expenditures for the State Public Defender and

Recognizing that Indiana does not compare favorably with other similar states in terms of expenditures for defense services being provided, there have been a number of efforts over the past decade to improve the system for providing defense services in Indiana. These efforts have included both studies by experts in the field of criminal defense and legislative initiatives to improve the system.

Historical Attempts to Improve Indigent Defense in Indiana

Several studies were conducted during the past decade by specialists in the field of indigent defense looking both at the overall state and at Marion County alone. In addition, the Indiana and Indianapolis Lawyers Commissions conducted an ongoing review of indigent defense issues in Indianapolis and throughout the state in the late 1970s. The recommendations of these study groups led to a number of legislative proposals, primarily intended to establish a public defender agency in Marion County, to create a public defender commission at the state level, and to provide for some level of state funding. Specifically, these activities included the following:

Studies

- NLADA conducted a statewide review of "The Structure and Funding for Criminal Defense of Indigents in Indiana" in 1974.
- The Public Defender Services Committee of the Indianapolis Lawyer's Commission examined indigent defense services in Marion County, other Indiana counties, and other states in 1976.
- The National Center for Defense Management (under the auspices of the LEAA Criminal Courts Technical

Assistance Project) conducted "An Analysis of Indigent Defense Services in Marion County (Indianapolis), Indiana" in January of 1977 at the request of the Indiana Criminal Justice Planning Agency.

- The Criminal Defense Technical Assistance Project, funded by LEAA (Robert L. Spangenberg, Project Director), prepared a report on "The Public Defender System, Marion County, Indiana: Current and Projected Costs" in January 1980, again at the request of the Criminal Justice Planning Agency.

Legislative Highlights

- SB 376 was submitted in 1979 to establish a public defender agency in Marion County. A Senate Judiciary subcommittee unanimously recommended passage, but the bill was withdrawn at the request of the Indianapolis Bar Association (IBA), which established a Public Defender Committee to determine whether the deficiencies in the system for providing defense services in Indiana could be adequately cured without legislation.
- In 1980, SB 385 (nearly identical to SB 376), was filed with the endorsement of the IBA but, due to the fact that 1980 was a short session, the bill was not called for a hearing.
- Similar legislation was filed in 1981 and was passed by the Senate but failed to get a hearing in the House of Representatives. Legislation to create an independent Marion County Public Defender Office has not been resubmitted since 1981.
- HB 1860, to create a public defender commission with a 25% state reimbursement for county defense expenditures, was submitted in 1985. The bill received a unanimous recommendation by the House Judiciary Committee, but was not called on third reading and died.
- PD 5289 would create a Public Defender Commission and provide 50% reimbursement. The proposed bill has been endorsed by the Legislature's Interim Study Committee on Probation Services and Indigent Counsel, and may be filed in the upcoming (1986) legislative sessions.

The Present Technical Assistance Project

The Criminal Justice Section of the Indiana State Bar Association and the Indiana Public Defender Council contacted the

American Bar Association Bar Information Project in the fall of 1985 to request technical assistance in support of the proposed legislation to be submitted in 1986. As a result of this request, the Bar Information Project sent Robert L. Spangenberg and Patricia A. Smith of the Spangenberg Group in Newton, Massachusetts to Indianapolis for two days in early November 1985. During the course of the visit, we interviewed the following individuals in person:

- Larry Landis, Executive Director of the Indiana Public Defender Council
- Susan Carpenter, State Public Defender
- Bruce Kotzan, State Court Administrator
- Lilia Judson, Assistant State Court Administrator
- Joseph Loftus, Chief Staff Person for Pat Keily, Chairman of the House Ways & Means Committee
- Chuck Nemeth and Charles Pride, State Board of Accounts
- John Sweazey, Chairman of the Marion County Republican Central Committee
- Bobby J. Small, Director, Indiana Criminal Justice Institute
- Judy Honey, Executive Assistant to the Governor.

In addition to these interviews, indigent defense data from the following sources was collected and analyzed:

- 1982 data on selected Indiana counties collected for the National Criminal Defense Systems Study; the 17 counties in this survey included all the largest counties and a stratified sample of the remaining counties;

- 1983 Indiana Judicial Report data published by the Division of State Court Administration, particularly on county expenditures for indigent defense;
- 1984 Indiana Judicial Report data, particularly overall criminal caseload statistics;
- Data reported during phone survey of selected Indiana counties conducted in November of 1985. Information gathered included program descriptions, 1984 costs, 1984 caseload, and projections for 1985, where possible.
- Data provided by the Office of the State Public Defender, including the Annual Report for fiscal year 1984-85; and
- Program information included in the files of the Indiana Public Defender Council.

Information collected from all of these sources has been used to develop the estimates and projections included in this report describing the overall impact of PD 5289 on the system for providing defense services in Indiana.

THE PROPOSED LEGISLATION

Despite the fact that the Indiana General Assembly did not act favorably on HB 1860 during its 1985 session, it recognized the need for further study of the indigent defense issue, and created the Interim Study Committee on Probation Services and Indigent Counsel. The Committee consisted of six senators and six representatives. Its activities included reviewing the present system for service delivery and recommending specific changes in the legislation to address the problems identified. This process resulted in the drafting of PD 5289, based on HB 1860. In its meeting on October 16, 1985 the Committee "strongly recommend[ed] the concept of PD 5289 and most aspects of the proposed draft." A few issues regarding the appointment of members of the state commission and county boards were left open for resolution during the final discussion of the bill.

*

Highlights of the Bill

There are two main features of the proposed legislation:

- 1) the creation of a state public defender commission,
and
- 2) the reimbursement by the state of 50 percent of the counties' defense expenditures.

Additional provisions of the bill would include:

- the creation of county public defender boards;

*

The full text of PD 5289 appears in Appendix A.

- the collection of contributions from partially indigent defendants; and
- the imposition of court costs on persons who plead or are convicted of felonies, misdemeanors and infractions.

The Indiana State Public Defender Commission, as presently proposed, would consist of 7 members:

- 2 persons, appointed by the governor, who have demonstrated an interest in the proper functioning of the defender system and who do not both belong to the same party;
- 2 persons, appointed by the Supreme Court of Indiana, who do not both belong to the same party;
- 2 attorneys, appointed by the president of the largest professional organization of attorneys in the state, who do not both belong to the same political party;
- An attorney appointed by the President of the Indiana Public Defender Association.

Several members of the Interim Study Committee suggested that all appointments to the Commission should be made by elected officials, apparently objecting to the provisions that would enable attorneys' associations to make appointments. This issue was left open by the Committee and will have to be resolved eventually. The experience in other states with similar commissions indicates that who is appointed to the commission is more significant to its operations than who makes the appointments. The Commission should be broadly-based and representative of the state's legal community. Members should be chosen on a bipartisan basis. Finally, because of the potential for conflicts of interest, judges and/or prosecutors should not be appointed to

the Commission. The proposed legislation appears to be cognizant of most of these requirements.

The Commission's responsibilities would include appointing the State Public Defender; establishing standards for defense services (indigency guidelines, attorney eligibility standards, and caseload standards, among others); establishing fee schedules for payment of private counsel; reviewing the comprehensive plans for providing defense services submitted by the newly created county defender boards and certifying that they meet the standards established by the Commission; and reimbursing the counties whose plans are approved.

A number of other states have developed a permanent state board or commission over the last several years. These bodies vary considerably in terms of how they are constituted and procedures for the appointment of the board, the major functions of the board and the nature and responsibility of the local county organizations (if any are included).

The following examples illustrate some of these differences:

- In Missouri, the legislature created a State Public Defender Commission on April 1, 1982 with the responsibility of administering a statewide public defender system for the entire state. At the same time, funding responsibility was shifted from the counties to the state.
- In Massachusetts, the legislature created the Committee for Public Counsel Services to begin on July 1, 1984. The Committee has the total responsibility for administering the mixed public defender private bar program and is required to develop numerous standards and guidelines.

A number of states have formed a permanent commission in recent years without adopting a statewide public defender approach. These commissions are more nearly analogous to the one proposed in Indiana.

- In 1983, the Kansas legislature created the State Board of Indigent Defense Services. The legislature attempted to empower the Board to develop standards and guidelines for local program operations, while leaving the choice of the program to the counties.
- In North Dakota, the North Dakota Supreme Court established the North Dakota Legal Counsel for Indigents Commission by Administrative Rule in 1982. The purpose of the Commission is "to provide planning, guidelines and technical assistance to counties and judicial districts in the improvement of defense services for indigent defendants in criminal cases in North Dakota." The Commission has developed detailed indigency standards, a detailed plan for implementation of recoupment orders, established a new fee schedule for court appointed counsel and developed a model contract for contract defense programs. Like Kansas, it is up to each county to determine which type of system is most appropriate for their jurisdiction.
- In Oregon, the state legislature in 1985 created the State Indigent Defense Board to conduct continuous oversight into the state funded, but county option program. Among the responsibilities of the Board are to develop standards for local program operation, to establish a minimum fee schedule for the private bar, to develop standards and procedures for contract defense programs, to provide legal training for lawyers providing indigent defense services and to gather and collect pertinent statistical data.
- The Ohio Public Defender Commission was established ten years ago with many of the same goals and requirements of other Commissions just discussed. One of the interesting features of the Ohio Commission is the reimbursement by the state of up to 50% of the county expenditures for the local program if the local programs meet the standards and guidelines established by the Commission. The Ohio Commission is substantially larger and performs many more tasks than the

other commissions just discussed. While retaining the local county option concept, it now handles many of the indigent defense cases on appeal, represents inmates in the state prison and provides back-up counsel in complex cases such as death penalty for local court appointed counsel and local county public defenders. This system in Ohio is similar in many of its key elements to the proposed legislation in Indiana.

The 50 percent reimbursement provisions in PD 5289 are modeled after the Ohio program. Although Ohio and Georgia (to some extent) are the only other states that use this specific mechanism for sharing the costs of indigent defense services, a number of states use other methods of achieving the same ends. In Wyoming, for example, by statute the state pays 85 percent of the costs while the counties contribute 15 percent. In South Carolina, the state subsidizes the counties according to a population-based formula and the counties make up the difference. Several states provide funds for representation in certain courts handling primarily felonies while the counties continue to pay for misdemeanor representation in the lower courts--these states include Kansas, North Dakota, Tennessee, and Montana. On a smaller scale, a number of states cover the majority of indigent defense costs while requiring that the counties contribute space and utilities to the programs (e.g., Florida, Missouri, North Carolina, and Kentucky).

In order to receive state funds under PD 5289, the counties must establish county defender boards, consisting of three members. The members would be chosen under the proposed legislation by the County Council, the county Circuit Court judge, and the president of the largest bar association in the county. Once

again, several members of the Interim Study Committee suggested that board members should be chosen by only elected officials.

The county boards would be responsible for preparing a comprehensive plan for providing defense services to indigent persons in the county. Counties may choose from among a number of program options in devising this plan:

- 1) A county public defender office;
- 2) A joint county public defender office;
- 3) Contract(s) with an attorney, group of attorneys or private organization; and/or
- 4) An assigned counsel system of panel attorneys (under rules to be established by the commission).

Other responsibilities of the county board would include recommending an annual operating budget for the planned program(s) and reporting annually to the County Council and the state commission on program operations. The board would be required to cooperate with the Commission in maintaining the standards established by that body. Finally, the county board would be empowered to appoint, contract with or maintain a list of attorneys for the provision of defense services.

The provisions in the bill for collecting contributions from defendants reflect a general feeling that those who receive free counsel and can afford to pay a portion of the expense should be required to do so. Many observers also suggest that defendants take more seriously their responsibility to communicate and consult with their appointed attorney if they have paid even a nominal fee for the services.

While collecting contributions up front from all clients who can afford to pay avoids some of the legal and political pitfalls associated with trying to recoup the costs from convicted offenders after disposition, a number of issues regarding the use of such programs require further study before claims of their effectiveness can be verified. The most significant of these questions is whether sufficient amounts can be collected to offset the administrative costs of the collections process and yield surplus revenues for the support of overall program operations.

Based on our experience, having just completed a year-long study of recoupment and contribution programs for the National Institute of Justice, U.S. Department of Justice, the record of other jurisdictions in collecting contributions from defendants is too limited to be conclusive regarding the ability to collect significant amounts. One factor that clearly has an impact on collections is the size of the fees assessed. Fees should be set low enough that they can be paid immediately and, preferably, in a lump sum. While some payments may be made in installments in special cases, such procedures increase the administrative costs of the collections effort and should not be used routinely.

Nearly all of the jurisdictions collecting contributions from partial indigents turn the money over to the state or county for deposit in the general fund. This practice is increasingly being challenged, on the grounds that the monies should be earmarked specifically for use in support of indigent defense services. In the state of Missouri, for example, the

State Public Defender has proposed legislation that would place such funds in a non-reverting revolving account for the purpose of underwriting the expenses of providing essential services such as special investigations and expert witnesses in complicated cases.

The proposed legislation for Indiana avoids these problems and the need for later revision by providing at the outset that any funds collected from partially indigent defendants would be deposited in a public defense fund to be administered by the State Public Defender. The monies in this fund would not revert to the state general fund at the end of the year, but would carry over into the next fiscal year.

Finally, the proposed bill would impose court costs of \$5 on virtually all criminal and quasi-criminal cases.* Specifically, court costs would be imposed on persons who plead guilty or are convicted of offenses in the circuit or superior courts; infractions or ordinance violations in the county courts or the minor offenses or violations docketed in a circuit or superior court; cases in municipal court; and in delinquency proceedings. Proposals such as this have increased in recent years, as jurisdictions have searched for alternative sources of revenues outside the general appropriations process. Five other states use court cost mechanisms similar to that proposed in Indiana:

* While the current draft of the bill included in Appendix A specifies a \$3 court cost, the general feeling was that that figure was unnecessarily low and could be raised to \$5. Thus, the \$5 figure is used throughout this report.

- Alabama - Funds collected are deposited in a fair trial tax fund (state)
 - \$5.00 on all criminal, quasi-criminal and civil cases docketed in municipal court
- Louisiana - \$4.50 for each misdemeanor, except a parking violation (up to no more than \$17.50 as specified by district judges)
 - \$10.00 felony (up to no more than \$17.50)
 - Collected funds are deposited in a district indigent defender fund
- Arkansas - Counties of 15,000-16,000 population: \$5.00 on each convicted or plead defendant in felony and misdemeanor (including traffic), in all courts
 - 34,600-36,600 population: \$5.00
 - 49,000-49,700 population: \$15.00
 - 24,000-25,000 population: \$5.00
 - Funds are deposited in a county public defender fund
- Tennessee - Counties with population of 450,000-750,000: \$10.00 on all state misdemeanor and felonies (no non-moving traffic)
 - Funds go to the county government for support of indigent services
- Ohio - \$7 on all misdemeanors (except parking tickets)
 - \$20 on all felonies
 - Funds are deposited in the state indigent defense fund

The court costs program in Ohio has been so successful that in FY 1985 the state collected over \$10.5 million, enough to cover all the expenses of reimbursing the counties for trial level services. (The state spent an additional \$3.5 million for the Office of the State Public Defender and the counties spent another \$10.5 million in support of direct services in their locale.) Out of a total state budget of \$25 million, 42 percent was generated through the imposition of court costs.

One factor that must be weighed when considering the financing of indigent defense in Indiana is the long list of 27 different types of court costs that already can be (and routinely are) assessed against convicted defendants. Under the present system an individual convicted of a class A misdemeanor or a felony could be assessed as much as \$71 in standard fees, covering court costs (\$10), state judicial fees (\$9), prosecuting attorney fees (\$42), and a service of process fee (\$10). Other costs may be added if the defendant is convicted by a jury (\$50), is on probation (initial and monthly user's fees vary), is in an alcohol or drug program (varies) and for a variety of other reasons. (See Appendix B for a full listing of possible fees and their amounts.)

In response to this complex system of collections (further complicated by the necessity to divide the funds between the state, the county and the locality) and the burden it places on the clerks of the courts in Indiana legislation will be submitted this year to consolidate all fees, most likely into a single fee for all types of cases, probably in the range of \$80-\$100. What effect this proposal would have on the ability to collect court costs under the provisions of PD 5289 is as yet unclear.

In each of the past several years the Indiana legislature has added several more court costs to the list. In 1984, for example, they added 4 or 5 new fees and amended 2 or 3 existing ones. Thus, even though some may have a philosophical objection to a "pay-as-you-go" criminal justice system, as long as the Indiana legislature apparently has a strong predilection for

using court costs to generate revenues for the system, and a reasonable number of the costs assessed are actually collected, such a provision may be an important advantage of the proposed bill.

Why is This Bill Necessary?

Studies conducted in Indiana over the past ten years have consistently pointed out a number of deficiencies in the indigent defense system. We personally observed some of these problems in our work in 1980 and again during the nationwide study we conducted in 1981-82. Many of these deficiencies identified in the past were again confirmed during our most recent visit in November 1985. These deficiencies include:

- There are no consistent, statewide standards for the operation of indigent defense programs. A patchwork of programs has developed around the state with considerable confusion even as to what they should be called. Contract programs are being used extensively without any of the necessary safeguards and performance standards to guard against choosing the lowest bidder for cost considerations alone. Attorneys with limited felony trial experience are receiving appointments in death penalty cases. There are no provisions for early entry of counsel, sometimes resulting in defendants remaining in jail for weeks waiting to see their attorney.
- Public defenders may have the appearance of being subject to judicial control because of the appointment procedures employed in most counties.
- Indigent defense services are underfunded because of the serious burden the costs represent in counties with a limited tax base. A single big case, such as a capital murder case, can wipe out a county's defense budget for an entire year. In many counties, substantial caseloads result in payment of only \$50-\$100 per felony case, creating an incentive to plead clients guilty rather than take cases to trial.

- Support services (such as clerical, investigative, and expert witness services) are not routinely available to defense attorneys, putting them on uneven footing with prosecutors.
- There are no provisions for caseload control. Salaried and contract public defenders take all cases and inevitably get overloaded at times. Without caseload/workload standards, overloaded lawyers are unable to spend the time necessary to defend individual cases, a situation which places the attorneys in danger of being in violation of their professional ethics, and denies defendants the meaningful defense to which they are entitled.
- There is a danger of increased claims of ineffective assistance of counsel under the present system with the problems outlined here. The costs of retrying cases in such circumstances can be extremely high and are better avoided by providing for adequate representation in the first place.
- There are limited cost containment measures, such as uniform indigency standards, contribution and/or recoupment programs. Further, there is little systematic monitoring of costs at the state level, and little accountability in the individual counties.
- There is no reliable statistical base for indigent defense data. Little information is available on the types of programs in existence. The information on indigent defense expenditures reported by the state court administrator's office is more reliable in some cases than in others, and it reports no data on indigent caseloads. A few counties collect and maintain this data centrally, but most do not.

Naturally, the passage of PD 5289 would not solve all of these problems immediately, but it would provide a framework within which even those issues not directly addressed by the bill could eventually be solved.

In summary, passage of PD 5289 would provide the following advantages:

- Consistency, uniformity and integrity of the system -- through the creation of a public defender commission charged with oversight of the provisions of indigent defense services across the state.

- Flexibility and local autonomy -- through the provisions allowing the counties to choose the program(s) for providing defense services in their locale. As the Interim Study Committee pointed out in its deliberations concerning the bill, one of its major advantages is that it "provide[s] flexibility for counties to design systems appropriate to their needs." Counties may even opt for no state oversight by the Commission by not forming a county board; these counties would, however, then have to forego any state funding.
- Accountability -- through the provisions regarding the maintenance of information on program operations along with expenditure data that would be carefully audited for purposes of reimbursement.
- Fiscal relief for overburdened counties -- through state reimbursement of half the counties' expenditures for indigent defense.
- Alternative sources of funding -- through the collection of contributions from partially indigent defendants and the imposition of court costs on nearly all persons who plead or are convicted of criminal offenses.

A number of the provisions of the bill, as noted above, relate to the costs and funding of indigent defense services in Indiana. The following section attempts to provide an initial estimate of the fiscal impact of those provisions.

FISCAL IMPACT OF PD 5289

The lack of data regarding the nature and level of indigent defense services presently being provided in Indiana makes it difficult to project reliably the fiscal impact of the proposed legislation. Nonetheless, analysis of the data acquired from the various sources described above has enabled us to begin to estimate in a broad manner the indigent criminal caseload, project the costs of providing representation in those cases, estimate the revenues that would be generated under the proposed legislation, and finally, to estimate the costs allocated to both the counties and the state under a 50 percent reimbursement plan. Throughout the following analysis, projections are made for the 1987 calendar year, assuming that the provisions of PD 5829 would be first implemented in that year if the legislation passes.

Calculating the Indigent Criminal Caseload

The most fundamental gap in indigent defense information in Indiana is in the area of caseload statistics. There simply are no aggregate statistics on the number of indigent cases in which representation is provided throughout the state. Without such information, or at least a reasonable estimate, it is impossible to make projections about the need for defense services and the expenses of providing them. In order to derive a reasonable estimate of the indigent caseload, first it is necessary to identify the total criminal caseload for the state for which a right to counsel exists.

The following figures are taken primarily from the 1984 Indiana Judicial Report, the most recent data available when this report was prepared. The figures represent cause numbers, which in some cases may include multiple defendants, while in others may correspond only to one of several charges against a single defendant arising out of a particular incident. For purposes of this exercise, it is assumed that the effects of these two factors on the caseload statistics neutralize one another and that these figures represent a rough equivalent of the number of defendants passing through the criminal courts. In order to provide the fullest accounting possible of defense-related activities, we have used the number of reported filings as the measure of caseload.

TABLE 2

TOTAL CRIMINAL CASELOAD - 1984

Felonies :	24,764
Misdemeanors :	97,588
Traffic Misdemeanors :	96,188
Juvenile cases :	<u>30,347</u>
Total Criminal Cases :	248,887

A number of adjustments have been made in the statistics reported by the State Court Administrator's Office. Cases categorized as "re-docketed criminal," which includes both felonies and misdemeanors, were allocated between those two categories proportionate to their numbers in each individual court as reported in the 1984 Judicial Report. Cases reported for the Marion County Municipal Court represent individual charges according to the State Court Administrator, thus the figures have been divided by two, the average number of charges per defendant observed in our experience in other jurisdictions around the country. Finally

the Marion County Municipal Court figures have been divided into felonies and misdemeanors according to information gathered on site regarding the number of Class D or less serious felonies handled in that court.

In order to determine how many cases actually resulted in the appointment of counsel, it is necessary to apply an indigency rate to each of the above figures. Indigency rates used below have been developed through a careful analysis of data collected in a recent telephone survey of selected counties' indigent defense programs. While the sample was biased towards the more established public defender offices (because they are the most likely to have such statistics available) it included a broad range of smaller and larger counties, and a good mix of urban and rural communities. The caseload information provided by the individual programs was compared with the total criminal caseload reported by the State Supreme Court Administrator's Office for the corresponding county to derive actual indigency rates in each of the major case categories. The averages of these figures were then taken and applied to the total criminal caseload to estimate the statewide totals of indigent defense cases. The indigency rate of 45 percent for felonies that resulted from this calculation is consistent with felony rates around the country reported in the 1981-82 National Criminal Defense Systems Study. The 16 percent rate for misdemeanors, however, is low compared to the national average of approximately 25 percent, probably due to the fact that the caseload figures used include a large number of traffic misdemeanors. The juvenile indigency rate of 23 percent is significantly lower than the approximately 75 percent reported for most states and the reasons for this disparity are unclear.

TABLE 3

ESTIMATED CALENDAR 1984 INDIGENT DEFENSE CASELOAD

<u>TYPE OF CASE</u>	<u>TOTAL CASES</u>	<u>INDIGENCY RATE</u>	<u>INDIGENT CASES</u>
Felonies	24,764	45%	11,144
Misdemeanors	193,766	16%	31,003
Juvenile Cases	<u>30,347</u>	23%	<u>6,980</u>
TOTALS	248,887	(18.7%)	49,127

This figure of 49,127 represents an estimate of the total number of cases in which the counties provided representation in calendar 1984. Defense services were provided by the state in another 1,148 post-conviction relief and other appellate matters ("files opened") including contracted-out cases, in FY 1984-85.

The estimated indigent defense caseload of 49,127 for 1984 is 17 percent greater than the approximately 42,000 cases reported for Indiana two years earlier in the 1981-1982 National Criminal Defense Systems Study. (That study collected reliable cost and caseload data from 17 Indiana counties, including the state's largest counties.) During the same period, the total criminal caseload for the state remained essentially the same, after accounting for the decriminalization of less serious traffic misdemeanors in 1982. The increase in indigent cases relative to the overall caseload in Indiana is not surprising given the financial strains experienced by many of its citizens as a result of the downturn in the nation's basic manufacturing industries and the deepening farm crisis. Other factors that could have an impact on the number of indigent cases, although there is not enough information available to assess the full extent of that impact, would include a possible loosening of the indigency

standards used for determining eligibility, new requirements in the laws mandating appointment of counsel and/or changes in the policies regarding the declaration of conflicts in cases involving co-defendants. Since none of these issues is going to disappear or be resolved immediately, we predict that the indigent caseload will continue to rise at a comparable rate of 18 percent per year over the 3-year period from 1984 through 1987. Thus, we project a total indigent caseload of 61,886 in calendar 1987.

Projecting the Total Costs of Indigent Defense

Fortunately, unlike caseload data, there is reasonably reliable expenditure data for indigent defense services in Indiana. The following table shows the trend in indigent defense expenditures for trial representation from calendar year 1982 to 1984.

TABLE 4

INDIGENT DEFENSE EXPENDITURES, CY1982 TO CY1984

1982	\$5,551,000*
1983	6,071,996
1984	6,763,627

* Because of the timing of the data collection phase of the National Criminal Defense Systems Study, some counties reported CY 1981 figures while others reported CY 1982 data. Thus, this figure represents an approximation of the CY 1982 expenditures for trial representation.

This table shows that indigent defense expenditures have been going up approximately 10 percent a year, generally reflecting the increase in indigent cases. Based upon all of the above data we estimate that costs for trial representation will continue to rise approximately 10 percent per year and should reach the level of \$9 million in CY 1987.

In calculating the overall costs of indigent defense in Indiana it is also necessary to factor in the state expenditures for appellate defense and training services. In CY 1984, the total state and county costs for indigent defense services were:

TABLE 5

TOTAL INDIGENT DEFENSE COSTS IN 1984

County Expenditures	\$6,763,627
State expenditures:	
State Public Defender	1,119,767
Public Defender Council	<u>200,000</u>
TOTAL 1984 COSTS	\$8,083,394

For purposes of projecting the costs of the Public Defender Council into 1987, we will use the amount of \$300,000, 10% greater than the \$272,000 FY 1985-86 appropriation.

Projecting the costs of the State Public Defender is more problematic, because the duties of that office would increase substantially under the proposed legislation. Further, the office projections indicated a 23 percent increase in costs from FY 1985 to FY 1986, to approximately \$1.4 million, even without adding any additional responsibilities because of the increased demand for their services. Assuming a relatively modest increase

of 10% from FY 1986 to FY 1987, these costs alone would be approximately \$1.5 million. We estimate that an additional \$1,125,000 dollars would be required for providing representation by the state public defender in all appeals. Administrative costs of the public defender commission are estimated at \$125,000 under the proposed legislation. Thus the total projected costs for 1987 are as follows:

TABLE 6

PROJECTED TOTAL INDIGENT DEFENSE COSTS FOR 1987

Trial	\$9,000,000
Appeals (State Public Defender)	2,625,000
Administration (State Public Defender Commission)	125,000
Public Defender Council	<u>300,000</u>
TOTAL 1987 COSTS	\$12,050,000

Estimating Revenues Under PD 5289

The final step required in evaluating the fiscal impact of PD 5289 is to estimate the revenues that will be generated under the various provisions of the bill which would offset the costs projected above. The two sources of additional revenues are contributions from partial indigents and court costs imposed on criminal offenders who have either plead guilty or been convicted.

Estimated revenues from partially indigent contributions are based on the initial assumption that many indigent defendants in any given category of cases will not have sufficient funds to make any contributions, particularly those on public assistance. For purposes of the following calculations we assume that 50 percent of the indigents would fall into this category. Second, we

assume that the remaining 50% charged with a felony will be assessed a \$100 felony fee, but that half of them will not pay the full amount of the assessment (for purposes of this calculation, we have assumed that half of those assessed \$100 will ultimately contribute only \$50). In misdemeanor and juvenile cases, defendants able to pay would be charged a standard fee of \$50, but once again we assume that half will pay only a portion of the fee, or \$25. Thus, we calculate the following revenues from contributions, based on projections of the indigent criminal case-load for 1987:

TABLE 7

PROJECTED REVENUES FROM CONTRIBUTIONS

<u>Type of case</u>	<u>1987 Total Proj. indigent cases</u>	<u>50% subject to Assessment</u>	<u>Level of Contributions</u>	<u>Total Contributions</u>
Felonies	14,038	7,019	3509 @ \$100 = \$350,900 3508 @ \$ 50 = <u>175,400</u>	\$526,300
Misdemeanors	39,054	19,527	9763 @ \$ 50 = 488,150 9764 @ \$ 25 = <u>244,100</u>	\$732,250
Juvenile	8,793	4,396	2198 @ \$ 50 = 109,900 2198 @ \$ 25 = <u>54,950</u>	<u>\$164,850</u>
Total Revenues from Contributions				\$1,423,400

Estimated revenues from court costs are based on the assumption that one-third of the adult criminal offenders and one-half of the juveniles adjudicated delinquent will not be able to pay or the courts will not be able to collect the assessment and

that the standard fee assessed will be \$5 per offender. Because there has been essentially no change in total criminal caseloads in recent years, these projections are based on 1984 caseload figures.

TABLE 8

ESTIMATED REVENUES FROM COURT COSTS

<u>Type of Case</u>	<u>Total Cases</u>	<u># Subject to Assessment</u>	<u>Total Revenues</u>
Adult	546,970	361,002	\$1,805,001
Juvenile	30,347	15,174	<u>75,870</u>
Total Revenues from Court Costs:			\$1,880,871

Thus the total revenues estimated to be generated from contributions and court costs which will offset the overall costs of indigent defense services are \$3,304,271. Of course, these projected revenues from both contributions and court costs are based on a number of basic assumptions. Should actual experience differ from these assumptions, for example in terms of the number of defendants able to pay contributions or the level of court costs imposed, then actual revenues would also have to be adjusted.

Calculating the Overall Fiscal Impact

The following tables set forth the estimated 1987 fiscal impact under PD 5289 on the counties and the state compared to projections of the costs of indigent defense in CY 1987 under the present system.

TABLE 9

ESTIMATED CY 1987 INDIGENT DEFENSE
EXPENDITURES WITHOUT PD 5289

<u>Budget Item</u>	<u>State</u>	<u>County</u>	<u>Total</u>
Trial representation		\$9,000,000	\$9,000,000
Appeals		<u>1,125,000</u>	1,125,000
State Public Defender	\$1,500,000		1,500,000
Public Defender Council	<u>300,000</u>		<u>300,000</u>
Totals	\$1,800,000	\$10,125,000	\$11,925,000

TABLE 10

PROJECTED FISCAL IMPACT OF PD 5289 ON STATE
AND COUNTIES IN CY 1987

<u>Budget Item</u>	<u>State</u>	<u>County</u>	<u>Total</u>
Revenues (court costs and contributions)	--	--	\$3,304,271*
Trial representation	\$2,847,864	\$2,847,865	\$5,695,729
State Public Defender (Appeals)	\$2,625,000		\$2,625,000
State Public Defender Commission (Admin.)	\$125,000		\$125,000
Public Defender Council:	<u>\$300,000</u>		<u>\$300,000</u>
Total State & County Expenditures:	\$5,897,864	\$2,847,865	
Total Indigent Defense Expenditures:			\$12,050,000

* We have purposely not attempted to allocate the revenues generated from court costs and contributions from partial indigents between the state and the counties since the allocation of these revenues is clearly a decision to be made by appropriate Indiana officials. Thus, in the above table the projected revenues from these sources are simply subtracted from the total estimated costs for trial representation (\$9,000,000) and the remainder (\$5,695,728) is divided evenly between the state and the counties, to reflect the state's reimbursement of 50% of county expenditures.

A comparison of Tables 9 and 10 reveals the following:

TABLE 11
COMPARISON OF STATE & COUNTY DEFENSE EXPENDITURES
IN CY 1987 WITH & WITHOUT PD 5289

	<u>Without</u> <u>PD 5289</u>	<u>With</u> <u>PD 5289</u>	<u>Difference</u>
State	\$1,800,000	\$5,897,864	+\$4,097,864
Counties	\$10,125,000	\$2,847,865	-\$7,277,135
Revenues	- 0 -	\$3,304,721	+\$3,304,721

If our assumptions are correct for 1987, the counties' share of indigent defense costs in Indiana may well exceed \$10 million under the present system. With the enactment of PD 5289, not only would that figure be dramatically reduced to less than \$3 million, but the state would not be required to absorb the total difference since, under the new bill, additional revenues of more than \$3 million would likely be generated.

CONCLUSIONS

Passage of the proposed bill PD 5289 would result in a number of advantages to the citizens of Indiana including:

- Consistency and uniformity in indigent defense services statewide;
- Flexibility and local autonomy for the counties;
- Accountability with regard to both program operations and expenditures;
- Fiscal relief to the counties in the projected amount of \$4 million for 1987; and
- Alternative sources of funding in the 1987 projected amount of \$3.3 million to offset the overall costs of indigent defense. Thus, the state contribution out of a total budget of over \$12 million would be only \$5.9 million in 1987.

Other Issues for Review

While all of the above advantages are clear from the provisions of PD 5289, there are a number of issues related to the bill that remain unresolved.

First, procedures for the appointment of State Commission and county board members must be decided upon. As noted above, several members of the Interim Study Committee suggested that all appointments should be made by elected officials only.

Secondly, several reviewers of the proposed legislation have suggested that an additional program option should be addressed--namely elected public defenders. While choosing public defenders through this method is not a common practice nationwide, it is done with reported success throughout Florida, and some jurisdictions in Nebraska, Tennessee and in San Francisco,

California. Given that a few policymakers in the counties are interested in establishing elected public defenders, the Indiana General Assembly may want to consider adding that option to those already included in PD 5289, at least for counties with a large population.

A third issue that must eventually be dealt with relates to the practical aspects of the state's reimbursing the counties. The present bill is silent on the issue of how often or when (before or after costs are incurred) such reimbursement would take place. The Ohio statute which served as a model for PD 5289 stipulates that all expenses should be submitted for reimbursement within 60 days of their being incurred; in effect, this actually occurs on a monthly basis. Indiana law should require that expenses be submitted monthly or perhaps, quarterly. It is not advisable, for practical reasons relating to the administration and monitoring of the reimbursement program for the state to pay the counties up front for the estimated costs of defense services.

Fourth, the question of the specific relationship between the newly created Public Defender Commission and the already existing Indiana Public Defender Council remains to be defined. This need not be a complicated task, but is a necessary one in order to set up clear lines of authority and communication among these related agencies.

Finally, and most importantly, the issue of the quality of defense services in Indiana must ultimately be addressed. This particular technical assistance project did not evaluate the

quality of the services provided; however, a number of potential indications of problems were uncovered during the course of our short visit to Indiana and as a result of our prior work in Indiana along with a review of existing studies of the indigent defense system in Indiana. While not absolute indicators of inadequate defense services, the following issues have proven reliable signs of problems with quality in other jurisdictions around the country:

- Lack of public defender independence from the judiciary;
- Lack of early entry into cases;
- Low compensation possibly discouraging the participation of experienced criminal practitioners in the system;
- Lack of support services and money for investigation and experts;
- Extensive reliance on part-time defense attorneys and the increased possibility of conflicts of interest with their private practices;
- Expansion of contract programs without standards for necessary monitoring and supervision or for avoiding emphasizing only cost factors in the negotiation and award of contracts; and
- Lack of controls on the caseloads of individual attorneys.

The projections in this report are based on our best estimates of the current practices in Indiana. For example a 16 percent indigency rate was applied to all misdemeanor cases reflecting the actual practice revealed in our survey of selected Indiana counties, even though that rate is considerably lower than the misdemeanor average of 25 per cent per case elsewhere in the country. Likewise, juveniles are usually found indigent

at a rate of 75 percent, as contrasted to the 23 percent rate discovered in Indiana. Thus, should a subsequent formal evaluation conclude the indigent defense services are presently being provided at a different level in Indiana than the limited data available at the time this report was prepared indicated, or that these services do not fulfill the constitutional and statutory mandates, the cost and caseload projections included herein would have to be adjusted.

Further study is urgently needed to provide basic, reliable information regarding the indigent defense system in Indiana, particularly the types of programs actually providing services, the numbers of indigent cases in which representation is being provided, and the costs of those services. These data are essential for beginning to assess the quality of services presently being provided and for planning for the future provision of defense services. Some progress has already been made; a survey of defense services in the juvenile courts, under the auspices of the Criminal Justice Institute, is ongoing. A comparison survey of adult defense services is expected to get underway in 1986.

Once a public defender commission is established the question of guaranteeing quality defense services should be one of its major priorities. Even if a commission is not established in the near future, our observations indicate that Indiana policymakers should begin to address the quality issues outlined above immediately in order to assure that meaningful representation is being provided to indigent criminal defendants in Indiana.

APPENDIX A

TEXT OF PROPOSED BILL PD 5289

DIGEST

Adds IC 33-9-13 and IC 33-9-14 to: (1) establish an independent office of the state public defender in the judicial branch of government to serve as counsel for indigents in postconviction and appeals; (2) create a seven member public defender commission that appoints the state public defender; (3) create a public defender fund; (4) allow counties to establish three member public defender boards to create county plans for delivery of county defender expenses; (5) provide 50% state reimbursement of county public defender expenses if county plans meet state standards; (6) require an affidavit of indigency from a person seeking public defender services; (7) require payments by clients found to be only partially indigent; and (8) give the public defender commission rulemaking authority to enforce this chapter. Amends IC 33-17-8-2, IC 33-17-8-3, IC 33-17-8-4, and IC 33-17-8-5 to add a \$3 public defender fee to costs in criminal, quasi-criminal, and certain juvenile cases. Repeals IC 33-1-7 and IC 33-9-11, which are superseded. Partially effective July 1, 1986, and July 1, 1987.

A BILL FOR AN ACT to amend the Indiana code concerning public defenders.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-9-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ
2 AS FOLLOWS:

3 Chapter 13. Public Defender Commission.

4 Sec. 1. (a) There is created an Indiana public defender commission (referred
5 to in this article as the commission) to be composed of the following members:

6 (1) Two (2) persons, appointed by the governor, who have demonstrated an
7 interest in the proper functioning of the defender system and who do not both
8 belong to the same political party.

9 (2) Two (2) persons, appointed by the supreme court of Indiana, who do not
10 both belong to the same political party.

11 (3) Two (2) attorneys, appointed by the president of the largest professional
12 organization of attorneys in this state, who do not both belong to the same
13 political party.

14 (4) One (1) attorney appointed by the president of the Indiana Public Defender
15 Association.

16 (b) All terms are for four (4) years and until a successor takes office.

17 (c) The members of the commission shall elect one (1) of the members of the
18 commission as chairman.

19 (d) Judges, law enforcement officers, and court employees are not eligible to
20 serve on the commission.

21 (e) A vacancy occurring among the members of the commission before the
22 expiration of a term shall be filled in the same manner as the original
23 appointments. An appointment to fill a vacancy occurring before the expiration of

1 a term is for the remainder of the unexpired term.

2 (f) Each member of the commission who is not a state employee is not entitled
3 to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is,
4 however, entitled to reimbursement for traveling expenses and other expenses
5 actually incurred in connection with the member's duties, as provided in the state
6 travel policies and procedures established by the department of administration and
7 approved by the state budget agency.

8 (g) The members of the commission shall meet at least quarterly and at such
9 times as called by the chairman or at the request of three (3) commission members.

10 Sec. 2. (a) The commission shall do the following:

11 (1) Appoint the state public defender, without regard to political
12 affiliation.

13 (2) Establish the state public defender's salary.

14 (3) Establish standards for defense services provided under this article,
15 which shall include the following:

16 (A) Determining indigency and eligibility for legal representation.

17 (B) Selection and qualifications of attorneys to represent indigent
18 defendants at public expense.

19 (C) Determining conflicts of interest.

20 (D) Investigative, clerical, and other support services necessary to
21 provide adequate legal representation.

22 (E) Determining minimum and maximum caseloads of public defender offices
23 and contract attorneys.

24 (F) The operation of county public defender offices.

25 (G) Awarding contracts.

26 (H) Availability of counsel for indigents at critical stages before a
27 court determination of indigency.

28 (I) Assessment and collection of fees.

29 (4) Establish fee schedules for payment of attorneys.

30 (5) Adopt a biennial budget for the office of the state public defender and
31 for reimbursing county expenditures under IC 33-9-14-13.

32 (6) Review the comprehensive plans for providing defense services submitted by
33 county public defender boards under IC 33-9-14-2 and determine ninety (90)
34 days before the effective date of the plan whether the plan complies with the
35 rules established by the commission to entitle the county to state funding
36 under IC 33-9-14-13.

37 (7) Make an annual report to the general assembly and the supreme court on the
38 operation of the state public defender's office and the county defender
39 delivery systems.

40 (8) Appoint, employ, or contract with persons to implement this article,
41 including investigating and evaluating county defender plans and services to
42 determine compliance with standards adopted by the commission.

43 (b) The commission may not make any decision regarding the handling of any case
44 nor interfere with the state public defender or any member of the state public
45 defender's staff in carrying out professional duties.

46 (c) The commission may remove the state public defender from office during the
47 term of employment only upon a showing of good cause.

48 Sec. 3. (a) The office of the state public defender is created as an

1 independent office in the judicial department of state government.

2 (b) The state public defender shall administer this article in a just and
3 efficient manner.

4 (c) The term of office of the state public defender is for four (4) years and
5 until the appointment and qualification of a successor.

6 (d) The state public defender, when appointed and while in office, must be an
7 attorney of good standing who has been admitted to the practice of law in Indiana
8 for a period of not less than five (5) years.

9 (e) The public defender shall be provided with a seal of office on which shall
10 appear the words "Public Defender, State of Indiana". The public defender shall
11 have the power to take acknowledgments, administer oaths, and do all other acts
12 authorized by law for notary publics. Each such act shall be attested by the
13 public defender's official seal.

14 Sec. 4. The state public defender shall do the following:

15 (1) Supervise the operation and activities of the office of the state public
16 defender.

17 (2) Provide legal services to indigent persons in:

18 (A) appeals from cases involving convictions of a crime;

19 (B) appeals from cases involving children adjudicated as delinquents;

20 (C) cases involving persons committed to the department of correction in
21 proceedings before the department or parole board, if the right to legal
22 representation is established by law;

23 (D) appeals from other cases where the right to legal representation is
24 established by law, under rules established by the commission; and

25 (E) representation of any person confined in any penal facility of this
26 state or committed to the department of correction due to a criminal
27 conviction or delinquency adjudication who is financially unable to
28 employ counsel, in any postconviction proceeding testing the legality of
29 the person's conviction, commitment, or confinement.

30 (3) Appoint the attorney who represented the client in the trial court to
31 represent the client on appeal if so requested by the trial attorney and the
32 client. An attorney appointed under this subdivision shall be paid by the
33 state public defender according to a fee schedule approved by the state public
34 defender commission.

35 (4) Accept appointments for legal representation from courts under IC
36 33-9-14-12 and provide appropriate legal services.

37 (5) Pay attorneys appointed by the state public defender according to a fee
38 schedule approved by the state public defender commission.

39 (6) Establish and maintain suitable headquarters for the office as the state
40 public defender considers necessary for the proper functioning of the office.

41 (7) Prepare and submit to the commission for its adoption the annual and
42 biennial budget of the office of the state public defender.

43 (8) Assign or appoint attorneys to render legal services according to the
44 policies established by the commission.

45 (9) Make recommendations for amendments to court rules or for legislation, as
46 may be appropriate to improve the criminal justice system.

47 (10) Keep and maintain financial records of all cases handled, develop records
48 for use in the calculation of direct and indirect costs in the operation of

1 the office, and report, at least semiannually, to the commission on all
2 relevant data on the operations of the office, costs, and projected needs.

3 (11) Collect all money due the state for reimbursement for legal services
4 under this chapter and, when advisable, bring actions in court on behalf of
5 the state for the collection of the sums due the office of the state public
6 defender. All money collected or received by the state public defender shall
7 be paid to the treasurer of state for deposit in the public defense fund.

8 (12) Perform all other duties necessary or incidental to the performance of
9 any duties enumerated in this chapter.

10 Sec. 5. (a) This chapter does not require the state public defender to pursue
11 a claim or defense that is not warranted under law and cannot be supported by a
12 good faith argument for an extension, modification, or reversal of law, or that for
13 any other reason is without merit.

14 (b) This chapter does not prohibit an offender from proceeding on the
15 offender's own behalf or otherwise refusing the services of the state public
16 defender.

17 Sec. 6. The state public defender may do the following:

18 (1) Negotiate contracts with the United States or any federal executive,
19 legislative, or judicial branch to provide legal services to persons appearing
20 before the federal district courts located in this state or who are
21 incarcerated in federal custody in this state and to take whatever legal
22 action such representation requires, including appeal or the commencement of
23 any appropriate original actions.

24 (2) Establish divisions within the office for the purposes of the
25 administration of this article.

26 (3) In order to provide legal representation for indigent persons, conduct
27 investigations, obtain expert testimony, take depositions, use other discovery
28 methods, order transcripts, and make all other preparations that are
29 appropriate and necessary to an adequate defense or the prosecution of appeals
30 and other legal proceedings.

31 (4) Seek, solicit, and apply for grants from any source, public or private,
32 for the operation of programs for the defense of indigent persons and receive
33 donations, grants, awards, and similar funds from any lawful source. Money
34 from these sources shall be placed in the public defense fund.

35 (5) Provide representation or assistance in cases at the request of the county
36 public defender, contract attorney, or assigned counsel.

37 (6) Make all the necessary arrangements to coordinate the services of the
38 office with any federal, county, or private program established to provide
39 legal representation to indigent persons.

40 (7) Consult and cooperate with professional groups concerned with the causes
41 of criminal conduct, the reduction of crime, the rehabilitation and correction
42 of persons convicted of crime, the administration of criminal justice, and the
43 administration and operation of the office of the state public defender.

44 (8) Commence actions in the name of the state public defender or any client or
45 group of clients to seek injunctive relief or declaratory judgment on any
46 matter of concern to a person being represented by the office.

47 (9) Contract with or appoint any attorney to provide legal representation to
48 indigent persons entitled to representation by the state public defender.

1 Sec. 7. The state public defender shall appoint or employ, with the consent of
2 the commission, all staff necessary for carrying out the duties of the office,
3 including attorneys, investigators, paralegals, and other employees. Compensation
4 for employees and appointees shall be approved by the commission.

5 Sec. 8. (a) A determination of indigency for persons referred to or contacting
6 the state public defender shall be made upon initial contact or at the earliest
7 time circumstances permit and in accordance with the rules adopted by the
8 commission under this chapter.

9 (b) The representative of the state public defender making a determination of
10 indigency shall investigate the financial status of each person to be represented,
11 at the earliest time circumstances permit, and may require the person to disclose
12 the records of public or private income sources and property, otherwise
13 confidential, that may be of aid in determining indigency. The state public
14 defender may obtain information from any public record contained in any office of
15 the state, a political subdivision of the state, or an agency of the state without
16 payment of any fees ordinarily required by law.

17 (c) If a determination of indigency cannot be made before the time when the
18 first services are to be rendered, the state public defender shall render these
19 services on a provisional basis. If the state public defender subsequently
20 determines that the person receiving the services is ineligible, the state public
21 defender shall notify the person of the termination of services, subject to court
22 ordered reinstatement.

23 (d) All persons determined to be indigent in full or in part must sign an
24 affidavit swearing or affirming under penalty of perjury that all income and assets
25 reported are complete and accurate. In addition, the person must swear or affirm
26 in the affidavit to report immediately any change in financial status to the office
27 of the state public defender.

28 (e) If found to be indigent in part, the person shall be informed promptly of
29 the extent to which payment is expected for counsel and whether payment shall be
30 made in the form of a lump sum payment or periodic payments. The payment and
31 payment schedule shall be set forth in writing.

32 (f) Any person determined not to be indigent or to be indigent only in part may
33 request judicial review of the state public defender's determination in the court
34 having jurisdiction of the case in which the person is requesting representation.

35 Sec. 9. (a) The files maintained by the office of the state public defender
36 that relate to the handling of any case are confidential and are not open to
37 inspection by any person unless authorized by law, court decree, the commission, or
38 the state public defender.

39 (b) All communications between the individual defendant and any person in the
40 office of the state public defender or engaged by the state public defender are
41 fully protected by the attorney-client privilege to the same extent as though
42 counsel had been privately engaged.

43 Sec. 10. (a) The public defense fund is established to receive court fees or
44 other revenues for specific uses. The fund shall be administered by the state
45 public defender.

46 (b) The treasurer of state shall invest the money in the fund not currently
47 needed to meet the obligations of the fund in the same manner as other public funds
48 may be invested.

1 (c) Money in the fund at the end of a particular fiscal year does not revert to
2 the state general fund.

3 SECTION 2. IC 33-9-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ
4 AS FOLLOWS:

5 Chapter 14. County Public Defender Boards.

6 Sec. 1. (a) The county council in any county may adopt an ordinance
7 establishing a county public defender board consisting of three (3) members. One
8 (1) member shall be appointed by the county council. One (1) member shall be
9 appointed by the circuit court judge of the county. One (1) member shall be
10 appointed by the president of the largest county bar association in the county.

11 (b) Of the initial appointments made to the county public defender board, the
12 appointment by the county council shall be for a term of one (1) year, the
13 appointment by the circuit court judge shall be for a term of two (2) years, and
14 the appointment by the president of the county bar association shall be for a term
15 of three (3) years. Thereafter, terms of office are for three (3) years. Each
16 member shall hold office from the date of appointment until the end of the term for
17 which the member was appointed. Any member appointed to fill a vacancy occurring
18 before the expiration of the term shall hold office for the remainder of the term.
19 Any member shall continue in office subsequent to the expiration date of that
20 member's term until a successor takes office.

21 (c) The members of the board shall choose as chairman one (1) of the board
22 members. Meetings shall be held at least quarterly and at such other times as
23 called by the chairman or any two (2) members of the county public defender board.
24 Members of the board shall serve without compensation but shall be reimbursed for
25 actual expenses incurred while engaged in the duties of the board.

26 (d) The county council may terminate the county public defender board upon
27 giving at least ninety (90) days notice in writing to the commission.

28 Sec. 2. (a) The county public defender board shall prepare a comprehensive
29 plan for providing defense services to indigent persons. Upon review and approval
30 by the county council, the plan shall be submitted to the commission one hundred
31 eighty (180) days before the effective date of the plan for review and approval by
32 the commission under IC 33-9-13-2.

33 (b) The plan may include the following delivery plans or combinations thereof:

- 34 (1) County public defender office.
35 (2) Joint county public defender office.
36 (3) Contract with an attorney, group of attorneys, or private organization.
37 (4) Provision for an assigned counsel system of panel attorneys, under rules
38 established by the commission.

39 (c) The plan shall include provision of services to those found to be indigent
40 in part, who shall be required to pay part of the cost of counsel. Such persons
41 shall be promptly informed of the extent to which payment is expected and whether
42 the payment shall be made in a lump sum or in periodic payments. The plan shall
43 provide for collection of such payments. All money collected under this subsection
44 shall be deposited in the county general fund to be appropriated for any necessary
45 expenses of the county public defender.

46 Sec. 3. (a) If a county public defender office is established, the board shall
47 do the following:

- 48 (1) Recommend to the county council an annual operating budget for the office.

1 (2) Make an annual report to the county council and the commission on the
2 operation of the county public defender office, including information on
3 finances and costs and any other data and information requested by the
4 commission.

5 (3) Cooperate with the commission in maintaining the standards established by
6 rules of the commission under this chapter.

7 (4) Appoint the county public defender.

8 (b) The county public defender shall be appointed for a term of up to four (4)
9 years and may be reappointed. The county public defender may be removed from
10 office during the term only for good cause. The county public defender must be an
11 attorney admitted to the practice of law in Indiana at least two (2) years before
12 the appointment.

13 Sec. 4. The county public defender shall do the following:

14 (1) Maintain an office as approved by the county council upon recommendation
15 of the county public defender board.

16 (2) Hire and supervise staff necessary, as positions are approved by the
17 county council and recommended by the board, to perform the services of the
18 office.

19 (3) Keep and maintain financial records of all cases handled by the office and
20 report at least semiannually to the county public defender board and to the
21 commission on all relevant data on the operations of the office, costs, and
22 projected needs.

23 Sec. 5. (a) The county public defender shall provide legal representation to
24 indigent persons in cases where the right to counsel is recognized by law.

25 (b) Following appointment by the court to represent an indigent person, or
26 upon appointment pursuant to the rules of the court, the county public defender
27 shall provide the legal representation authorized by this chapter at every stage of
28 the proceedings following arrest, detention, service of summons, or indictment,
29 whichever occurs first.

30 (c) The county public defender may request the state public defender to
31 provide representation or assistance in any case if the county public defender
32 decides it is in the interests of justice.

33 Sec. 6. (a) The county councils in two (2) or more neighboring counties may
34 establish a joint county public defender board. The joint board shall have three
35 (3) members from each county.

36 (b) The councils shall agree on a specific date for the joint county public
37 defender board to be established, on which date the appointments of all members
38 shall take effect.

39 (c) The appointments to the joint county public defender board shall be made
40 by each county according to the specifications in section 1 of this chapter.

41 Sec. 7. (a) The agreement of the county councils establishing a joint county
42 public defender board must provide for the allocation of the proportion of expenses
43 to be paid by each county, which may be based upon population, number of cases, or
44 other factors as the county councils determine to be appropriate. The county
45 councils may amend their agreement from time to time to provide for a different
46 allocation of the proportion of expenses to be paid by each county.

47 (b) The agreement must designate the county auditor of the county with the
48 greatest population as the custodian of funds of the joint county public defender

1 board organized under section 6 of this chapter.

2 Sec. 8. (a) The county council of any county participating in a joint county
3 public defender board may withdraw from the agreement. A withdrawal is not
4 effective until at least ninety (90) days after the council has notified the
5 commission and the joint county public defender board in writing of the termination
6 date. The failure of a county council to approve an annual operating budget for
7 the joint county public defender office constitutes a notice of withdrawal by the
8 county from the agreement, effective January 1 of the succeeding year.

9 (b) Members of the joint county public defender board who are residents of a
10 county withdrawing from an agreement are considered to have resigned their
11 positions upon the completion of the withdrawal procedure provided in this section.
12 Vacancies thus created shall not be filled.

13 (c) If two (2) or more counties adjacent to each other remain parties to the
14 agreement made under section 6 of this chapter after the withdrawal, the county
15 councils of the remaining counties may agree to continue the operation of the joint
16 county public defender office and to reallocate the proportionate share of expenses
17 to be paid by each participating county.

18 (d) The joint county public defender board shall appoint the joint county
19 public defender and may remove that public defender from office during the term
20 only for good cause.

21 (e) The joint county public defender board shall:

22 (1) recommend to the county councils an annual operating budget; and

23 (2) make an annual report to the county councils and the commission on the
24 operation of the joint county public defender office, including complete and
25 detailed information on finances and costs, and such other data and
26 information as are requested by the commission.

27 Sec. 9. The joint county public defender has the same duties and powers as a
28 county public defender under this chapter.

29 Sec. 10. (a) The county public defender board may contract with an attorney,
30 a group of attorneys, or private organization to provide legal representation under
31 this chapter.

32 (b) Subject to the approval of the county council, the county public defender
33 board shall establish the amount of the contract under the rules established by the
34 commission.

35 (c) The county council shall, upon approving the amount of the contract,
36 appropriate an amount sufficient to meet the obligations of the contract.

37 Sec. 11. (a) The county public defender board may establish an assigned
38 counsel system of panel attorneys to provide legal representation under this
39 chapter.

40 (b) The county public defender board shall create and maintain a list of
41 attorneys qualified to represent indigent defendants under the rules adopted by the
42 commission.

43 (c) Upon the determination by a court that a person is indigent and entitled to
44 legal representation at public expense, the court shall appoint an attorney to
45 provide such representation from the list maintained by the county public defender
46 board.

47 (d) An attorney appointed to provide representation under this section may
48 request authorization from the judge hearing the case for expenditures for

1 investigative, expert, or other services necessary to an adequate defense.

2 (e) An attorney appointed to provide representation under this section shall
3 receive compensation and reimbursement for expenses by submitting a voucher in a
4 form approved by the commission and the state board of accounts to the court. Upon
5 approval of the voucher by the judge hearing the case, the voucher shall be
6 presented to the county auditor who shall process the claim as other claims against
7 county funds are processed.

8 (f) An attorney appointed to provide representation under this section shall
9 report to the county public defender board, upon completion of representation,
10 information regarding the case disposition in a form approved by the commission.

11 Sec. 12. (a) This chapter does not prevent a court from appointing counsel
12 other than counsel provided for under the county public defender board's plan for
13 providing defense services to indigent persons. A court may also appoint counsel
14 to assist counsel provided for under the county public defender board's plan as
15 co-counsel when the interests of justice so require. Expenditures by a county for
16 counsel not provided for under the county public defender board's plan are not
17 subject to state reimbursement under section 13 of this chapter.

18 (b) If the judge of a court having criminal jurisdiction determines that an
19 attorney provided for under the county public defender board's plan is not
20 qualified or available to represent a person charged in the court with a criminal
21 offense and eligible for representation at public expense, or upon a determination
22 by the judge that in the interests of justice an attorney other than the one
23 provided for by the county defender board's plan should be appointed, the judge may
24 make a written request to the state public defender to provide a qualified attorney
25 for the defense of the person, attaching to the request a copy of the information
26 or indictment. Expenditures for representation under this subsection shall be paid
27 by the county according to a fee schedule established by the commission and are
28 eligible for state reimbursement under section 13 of this chapter.

29 Sec. 13. (a) The county public defender board shall make a written report to
30 the county council that shall be audited by the county auditor. The county
31 council, after review and approval of the audited report, may then certify it to
32 the auditor of state for reimbursement. Fifty percent (50%) of the total of each
33 county's net expenditures for defense services under this chapter shall be paid by
34 the state on the order of the county auditor. Net expenditures are the gross
35 expenditures for defense services less the amounts received by the county under
36 section 2(c) of this chapter.

37 (b) If a county's public defender services fail to meet the standards
38 established by rules of the commission, the commission shall notify the county
39 public defender board and the county council of the failure to comply with its
40 rules. Unless the county public defender board corrects the deficiencies to comply
41 with the rules within ninety (90) days after the date of the notice, the county's
42 right to reimbursement from the state as provided in subsection (a) terminates at
43 the close of that fiscal year. If correction is not made, the commission shall
44 certify to the auditor of state that the right of reimbursement is terminated at
45 the close of that fiscal year.

46 Sec. 14. (a) The county public defender, contract attorney, or counsel
47 appointed by the court may not be a partner or employee of any prosecuting
48 attorney.

1 (b) City attorneys, law enforcement officers, judges, and court employees are
2 not eligible to serve on any county public defender board.

3 SECTION 3. IC 33-17-8-2, AS AMENDED BY P.L.167-1984, SECTION 83, IS AMENDED TO
4 READ AS FOLLOWS: Sec. 2. The clerk shall collect the following fees upon
5 conviction for an offense in the circuit or superior court, except in cases on the
6 minor offenses or violations docket:

7 (1) A judicial fee of nine dollars (\$9), to be deposited pursuant to IC
8 33-17-11-1.

9 (2) A prosecuting attorney's fee of twenty dollars (\$20) or thirty-six dollars
10 (\$36), as prescribed by IC 33-17-11-3.

11 (3) A fee of ten dollars (\$10), which belongs to the county, for each felony
12 or misdemeanor count upon which the defendant is convicted.

13 (4) If the defendant is convicted and placed on probation, an initial
14 probation user's fee and monthly user's fee in the amount set by the court
15 under IC 35-38-2-1.

16 (5) Witness fees as prescribed by IC 33-17-12.

17 (6) The document fees applicable under IC 33-17-10, which belong to the
18 county.

19 (7) In each case involving a jury, the applicable fee prescribed by IC
20 33-17-11-6.

21 (8) A public defender fee of three dollars (\$3), to be deposited in the fund
22 established by IC 33-9-13-10.

23 In addition, the clerk shall charge applicable fees for service of process under IC
24 33-17-7.

25 SECTION 4. IC 33-17-8-3, AS AMENDED BY P.L.167-1984, SECTION 84, IS AMENDED TO
26 READ AS FOLLOWS: Sec. 3. The clerk shall collect the following fees upon
27 conviction for an offense or upon entry of judgment in a case within the infraction
28 or ordinance violation jurisdiction of a county court or a case on the minor
29 offenses or violations docket of a circuit or superior court:

30 (1) A state docket fee of five dollars (\$5).

31 (2) A county docket fee of five dollars (\$5).

32 (3) A prosecuting attorney's fee of twenty dollars (\$20) or thirty-six dollars
33 (\$36), or a municipal prosecutor's fee of twenty dollars (\$20), as prescribed
34 by IC 33-17-11-3 and IC 33-17-11-4.

35 (4) A judicial fee of one dollar (\$1), to be deposited pursuant to IC
36 33-17-11-1.

37 (5) In infraction and ordinance violation cases, a judicial salaries fee in
38 the amount prescribed by IC 33-17-11-2.

39 (6) If the defendant is convicted of an offense and placed on probation, an
40 initial probation user's fee and monthly user's fee in the amount set by the
41 court under IC 35-38-2-1.

42 (7) Witness fees as prescribed by IC 33-17-12.

43 (8) The document fees applicable under IC 33-17-10, which belong to the
44 county.

45 (9) In each case involving a jury, the applicable fee prescribed by IC
46 33-17-11-6.

47 (10) A public defender fee of three dollars (\$3), to be deposited in the fund
48 established by IC 33-9-13-10.

1 In addition, the clerk shall charge applicable fees for service of process under IC
2 33-17-7.

3 SECTION 5. IC 33-17-8-4, AS AMENDED BY P.L.167-1984, SECTION 85, IS AMENDED TO
4 READ AS FOLLOWS: Sec. 4. The clerk shall collect the following fees in municipal
5 court upon conviction for an offense or upon entry of judgment in proceedings to
6 enforce an ordinance or a statute defining an infraction:

7 (1) A docket fee of fifteen dollars (\$15), which shall be deposited in the
8 city general fund in ordinance violation cases and in the county general fund
9 in criminal and infraction cases.

10 (2) A prosecuting attorney's fee of twenty dollars (\$20) or thirty-six dollars
11 (\$36), or a municipal prosecutor's fee of twenty dollars (\$20), as prescribed
12 by IC 33-17-11-3 and IC 33-17-11-4.

13 (3) A judicial fee of nine dollars (\$9), to be deposited pursuant to IC
14 33-17-11-1.

15 (4) In infraction and ordinance violation cases, a judicial salaries fee in
16 the amount prescribed by IC 33-17-11-2.

17 (5) If the defendant is convicted of an offense and placed on probation, an
18 initial probation user's fee and monthly user's fee in the amount set by the
19 court under IC 35-38-2-1.

20 (6) Witness fees as prescribed by IC 33-17-12.

21 (7) The document fees applicable under IC 33-17-10, which belong to the
22 county.

23 (8) In each case involving a jury, the applicable fee prescribed by IC
24 33-17-11-6.

25 (9) A public defender fee of three dollars (\$3), to be deposited in the fund
26 established by IC 33-9-13-10.

27 In addition, the clerk shall charge applicable fees for service of process under IC
28 33-17-7.

29 SECTION 6. IC 33-17-8-5, AS AMENDED BY P.L.2-1984, SECTION 12, IS AMENDED TO
30 READ AS FOLLOWS: Sec. 5. The clerk shall collect the following fees in
31 proceedings on a petition alleging that a child is a delinquent child as follows:

32 (1) The juvenile court may charge a delinquent child and his or the child's
33 parent, guardian, or custodian a docket fee of thirty dollars (\$30).

34 (2) Notwithstanding subdivision (1), in a county served by a juvenile court
35 referee who:

36 (A) was appointed to serve as a full-time referee; and

37 (B) does not practice law during his term as referee;

38 the court shall charge a delinquent child and his or the child's parent,
39 guardian, or custodian a docket fee of thirty dollars (\$30) and a judicial
40 salaries fee of nine dollars (\$9). The judicial salaries fee shall be
41 collected and forwarded like other judicial salaries fees under IC 33-17-11-2
42 and shall be deposited in the general fund of the state.

43 (3) The juvenile court shall charge a delinquent child and the child's parent,
44 guardian, or custodian a public defender fee of three dollars (\$3), which
45 shall be deposited in the fund established by IC 33-9-13-10.

46 SECTION 7. THE FOLLOWING ARE REPEALED: IC 33-1-7; IC 33-9-11.

47 SECTION 8. The person who was appointed public defender under IC 33-1-7-1
48 continues in that capacity until the commission established by IC 33-9-13-2, as

1 added by this act, appoints a successor state public defender.

2 SECTION 9. (a) County public defender boards that establish county defender
3 offices or contract for services under this act shall, for the initial term of
4 employment and to the extent possible, employ and contract with those attorneys:

5 (1) employed by county public defender offices as of June 30, 1986; or

6 (2) contracting to provide services under IC 33-9-10 as of June 30, 1986.

7 (b) Nothing in this act affects the rights and obligations of parties to
8 contracts made under IC 33-9-10.

9 SECTION 10. (a) The initial appointments to the commission established by IC
10 33-9-13-1, as added by this act, are to take effect July 1, 1986.

11 (b) One (1) of the initial members of the commission appointed by the governor
12 under IC 33-9-13-2, as added by this act, shall serve for a term of two (2) years
13 and the other for a term of four (4) years, as designated by the appointing
14 authority at the time of the appointment. One (1) of the initial members of the
15 commission appointed by the supreme court shall serve for a term of two (2) years
16 and the other for a term of four (4) years, as designated at the time of the
17 appointment. One (1) of the initial members of the commission appointed by the
18 president of the largest professional organization of attorneys in this state shall
19 serve for a term of two (2) years and the other for a term of four (4) years, as
20 designated at the time of the appointment. The initial member of the commission
21 appointed by the president of the Indiana Public Defender Association shall serve
22 for a term of four (4) years.

23 SECTION 11. (a) Except as provided in subsection (b), this act takes effect
24 July 1, 1987.

25 (b) SECTIONS 3, 4, 5, 6, and 10 of this act and IC 33-9-13-1, as added by this
26 act, take effect July 1, 1986.

APPENDIX B

LISTING OF CRIMINAL COSTS FROM COURT CLERKS' MANUAL

CRIMINAL COSTS

Court Costs, IC 33-17-8-2	\$ 10.00
State Judicial Fee, IC 33-17-11-1; 33-17-8-2	9.00
*Prosecuting Attorney Fees:	
Due State, IC 33-17-11-3	16.00
Due County, IC 33-17-11-3	4.00
(If action is Class A Misdemeanor or Felony)	
Violent Crime, IC 33-17-11-3	17.00
Family Violence and Victim Assistance, IC 33-17-11-3	5.00
Service of Process, IC 33-17-7-2 (Applicable Other)	10.00
Fees (See Other Fees-Criminal and Quasi-Criminal Proceedings Page 7-14)	
Jury Fee, IC 33-17-11-6	\$ 50.00*

Fines

* Assessed against the defendant as costs under IC 35-50-1-3 if the defendant is convicted or pleads guilty (jury is impaneled and sworn in).

Delinquent Children

Proceedings Alleging a Child Delinquent, IC 33-17-8-5:	
Docket Fee (Child and Parent, Guardian or Custodian)	\$ 30.00
County With Full-Time Referee, IC 33-17-8-5:	
Docket Fee	30.00
Judicial Salaries Fee	9.00

* Prosecuting Attorney Fees are:

	Infractions	Class B or C Misdemeanor	Class A Misdemeanor or a Felony
Due State	\$ 16.00	\$ 16.00	\$ 16.00
Due County	4.00	4.00	4.00
Violent Crimes	--	--	17.00
Family Violence and Victim Assistance Fund	--	5.00	5.00
Total	<u>\$ 20.00</u>	<u>\$ 25.00</u>	<u>\$ 42.00</u>

OTHER FEES - CRIMINAL AND QUASI-CRIMINAL PROCEEDINGS
(IF APPLICABLE)

Adult Probation User Fee, IC 35-38-2-1		
Felony:	Initial User Fee	25.00 to 100.00
	Monthly User Fee	5.00 to 15.00
Misdemeanor:	Initial User Fee	-0- to 50.00
	Monthly User Fee	-0- to 10.00
Adult Convicted in Juvenile Court:		
	Docket Fee, IC 33-17-9-1	10.00
Informal Adjustment Program - Juvenile, IC 33-17-9-2; Monthly User Fee, IC 31-6-4-12		
		5.00 to 15.00
Juvenile Probation, IC 31-6-4-18:		
	Initial User Fee	25.00 to 100.00
	Monthly User Fee	5.00 to 15.00
***Jury Fees, IC 33-17-3-7; 33-17-11-6		50.00 or 100.00

*** In criminal actions where a jury is impaneled and sworn in the jury fee is \$50.00. to be assessed against the defendant if the defendant is convicted or pleads guilty.

Witness Fee, IC 33-17-12-1	5.00
or if subpoenaed under IC 35-37-5-4	15.00
Plus Mileage at the rate paid state employees.	

Permanent Operator Record Fee Under
IC 33-17-9-3:

When a certified abstract of the record of a conviction or of the record of completion of a drug and alcohol services program is forwarded to the Bureau of Motor Vehicles:

1. Twenty-five dollars (25.00) if the conviction is for an offense under IC 9-11.
2. Seventeen dollars, fifty cents (17.50) if the conviction results in a court-ordered suspension (except under IC 9-11).
3. Seven dollars, fifty cents (7.50) upon completion of a drug and alcohol services program.
4. Seven dollars, fifty cents (7.50) in any other case. The fees still will be paid to the Bureau of Motor Vehicles within ten (10) days after the end of each month.

OTHER FEES - CRIMINAL AND QUASI-CRIMINAL PROCEEDINGS
 (IF APPLICABLE)
 (Continued)

Alcohol and Drug Services (1.00 to 5.00) and Alcohol and Drug Services Fee Program, not more than 300.00 [IC 16-13-6.1-31; 33-17-9-4]	Set by Court
Marijuana Eradication Program, [IC 15-3-4.6-4.1; 33-17-9-5]	Not More Than 300.00
Fish and Wildlife Violations [IC 14-2-3-8; 33-17-9-6]	10.00
Pretrial Diversion Program [IC 33-14-1-7; 33-17-9-7]:	
Initial User Fee	50.00
Monthly User Fee (Each Month)	10.00
Humane Fund Fee, IC 33-17-9-8	5.00
Document Fees, IC 33-17-10	--
Bail Bond Filing Fee, IC 33-17-8-7	
2.50 County General Fund	
2.50 County Extradition Fund	5.00

INFRACTION OR ORDINANCE VIOLATIONS OF COUNTY COURT OR MINOR OFFENSES OR
VIOLATIONS DOCKET OF CIRCUIT OR SUPERIOR COURT

	Violation of Motor Vehicle Laws	Violation of Fish and Game Laws	Violation of Other State Laws	Violation of City or Town Ordinance
(1) State Docket Fee	\$ 5.00	\$ 5.00	\$ 5.00	\$ 5.00
(1) County Docket Fee	5.00	5.00	5.00	5.00
Prosecuting Attorney Fees:				
(2) Due State	16.00	16.00	16.00	xx
(2) Due County	4.00	4.00	4.00	xx
(2)(3) Violent Crimes	17.00	xx	17.00	xx
(4) Family Violence and Victim Assistance	5.00	5.00	5.00	xx
(4) Municipal Prosecutor's Fee	xx	xx	xx	20.00
(5) Service of Process Fee				
(6) County Judicial Fee	1.00	1.00	1.00	1.00
(7) Permanent Operator's Record Fee	(7)	xx	xx	(7)
(8) Judicial Salary Fee	1.00	1.00	1.00	1.00
(9) Department of Natural Resources Fees	--	10.00	--	--
(10) Alcohol and Drug Services Fee	(11)	(11)	(11)	(11)
(12) Alcohol and Drug Services Program Service Fee	(11)	(11)	(11)	(11)
(13) Adult Probation Users Fee	(11)	(11)	(11)	(11)
(14) Pretrial Diversion Program				
(15) Witness Fees				
(16) Document Fees				
(17) Jury Fees				
(18) Bail Bond Filing Fee				
(1) IC 33-17-8-3				
(2) IC 33-17-8-3; 33-17-11-3				
(3) Applies only to Class A Misdemeanors and Felonies.				
(4) IC 33-17-8-3, for any violation which is a Class A, B or C Misdemeanors and Felonies.				
(5) IC 33-17-7-2				
(6) IC 33-17-8-3				
(7) IC 33-17-9-3, \$25.00, \$17.50, or \$7.50 in accordance with the schedule on Page 7-14.				
(8) IC 33-17-8-3				
(9) IC 13-2-32; IC 13-4-10; IC 14-1-6; IC 33-17-9-6				
(10) IC 16-13-6.1-31 - \$1.00 to \$5.00				
(11) Set by court with the statute listed.				
(12) IC 16-13-6.1-31 - Not to exceed \$300.00				
(13) IC 35-38-2-1, Initial fee not less than \$25.00 nor more than \$100.00, monthly				
(14) IC 33-14-1-7, \$50.00 initial fee, \$10.00 monthly user fee.				
(15) IC 33-17-12 (Page 7-14)				
(16) IC 33-17-10 (Page 7-18)				
(17) IC 33-17-11-6 (Page 7-19)				
(18) IC 33-17-8-7 (5.00)				