

# Misdemeanor funding coming back to defenders? Public defender offices hoping for restoration of misdemeanor reimbursement funding

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In mid-February, there were 36 openings for attorneys at the Marion County Public Defender Agency.

That coincides with 34 additional support staff vacancies at the agency, with MCPDA facing a severe shortage of social workers and other key employees.

It's the most job vacancies Bob Hill has seen in his 15 years as Marion County's chief public defender.

"It's approaching a tipping point," Hill said.

As staff shortages collide with overflowing caseloads, Hill and other chief public defenders around the state are keeping a close eye on new funding proposed by Gov. Eric Holcomb that would reimburse public defender offices for handling misdemeanor cases.



Bob Hill

Holcomb included an additional \$2 million in the governor's budget for county misdemeanor reimbursement at the request of the Indiana Public Defender Commission, according to Erin Murphy, the governor's press secretary.

That funding — which, in Holcomb's proposal, would fully fund misdemeanor reimbursement for the first time since 1997 — could add money that public defender offices throughout Indiana say they could use to hire additional attorneys and support staff, as well as boost starting salaries and employee retention efforts.

It's something public defenders like Hill say they see as key in reducing attorney caseloads and providing stronger, more efficient representation for clients.

Andrew Cullen, director of public policy and communications at the commission, said the commission is lobbying the Senate to restore the \$2 million, and the governor's misdemeanor reimbursement authorization language, to the state budget after it was stripped in the Indiana House.

"Frankly, I'm a little perplexed as to why the House stripped this out," Cullen said.

## Impact of reduced funding

There are 10 courts where the Marion County Public Defender Agency covers misdemeanor cases. That makes up largest portion of cases the agency has, Hill said.

But unlike felony proceedings, Hill's office doesn't get reimbursed for misdemeanor cases.

"This is the biggest hole in the state reimbursement system," he said.

It wasn't always that way.

The commission was established in 1989 with the ability to reimburse member offices for misdemeanor cases. But funding for misdemeanor defense reimbursement was eliminated in 1997 to allow for a higher rate of reimbursement for non-misdemeanor cases.

It wasn't meant to be a permanent elimination.

There are 67 counties, including Marion, that receive partial reimbursement from the state's Public Defense Fund for following standards of public defense work quality set by the PDC.

Commission Executive Director Derrick Mason said the majority of county public defender offices are not adequately staffed to handle the ever-growing number of misdemeanor cases.

By PDC guidelines, the maximum caseload for a full-time public defender that handles only misdemeanor cases can be 300 or 400, depending on whether the member county's office is considered adequately staffed.

But Cullen said there have been extreme examples of individual, full-time public defender attorneys in the state handling up to 900 misdemeanor cases in a year.

In 2021, the average misdemeanor-only attorney worked about double the caseload that would be allowed if misdemeanor standards were enforced, according to the commission.

Ray Casanova, MCPDA's chief trial counsel, said about 41% of his office's 2022 fourth quarter criminal trial cases involved misdemeanors.

Over the past several years, anywhere from 40%-50% of MCPDA's criminal trial cases annually were misdemeanors, Casanova said.

## Impact of reimbursement

Whether in Marion County or some of the state's smaller counties, there is a growing consensus among public defender offices that misdemeanor reimbursement would go a long way toward improving client representation and attracting new staff.

### Misdemeanors in Indiana

Currently, 67 of Indiana's 92 counties receive reimbursement for felony cases from the Indiana Public Defense Fund for following Indiana Public Defender Commission standards. But reimbursement for misdemeanor cases was eliminated in 1997, primarily for fiscal reasons.

#### A look at misdemeanor cases in Indiana:

**61%** of all adult criminal filings in Indiana are misdemeanors

**41%** the percentage of misdemeanor cases where counsel is appointed

**12%** lower per-capita county jail population in counties participating in the commission's reimbursement program\*

**20%** lower rate of low-recidivism-risk individuals in Department of Correction facilities in commission counties

**64-day** shorter sentences, on average, in DOC facilities in commission counties

\*based on data from 2013-2021

Source: Indiana Public Defender Commission

Casanova said the restoration of state misdemeanor reimbursement could funnel an additional \$1 million or more to Marion County's public defender office, a boon that could help adjust starting salaries and improve efforts to attract and retain attorneys and staff.



Tony Mellencamp

If Adams County could add attorneys to its public defender office, the county would be able to manage misdemeanor caseloads better, said Auditor Tony Mellencamp. The county's public defender office — which is a commission member — was assigned 184 new misdemeanor cases in 2022, Mellencamp said.



Brad Weber

Brad Weber, Adams County chief public defender, said PDC guidelines support full-time public defender attorneys being paid on the same level as elected county prosecutors.

Adams County has three full-time public defenders reimbursed under contract. Its caseload is divided equally.

State reimbursement on misdemeanor cases could pave the way for Adams County to add a fourth full-time attorney to its public defender's office, Weber said. But to attract a fourth public defender, the office would have to ask the county council to help with salary and benefits.

Weber and Mellencamp acknowledged that would be a tough sell.

Salary for a fourth attorney at the Adams County office would be \$40,000-\$50,000 a year. That, plus benefits and inclusion in the state's retirement system, would up the final number to about \$80,000.

"Council would never go for that unless there was a reimbursement," Mellencamp said.

Still, Weber said he tries to ensure his office is meeting PDC guidelines for caseload management. He said he knows of misdemeanor-only public defenders around the state being assigned hundreds of cases annually.

Weber also said misdemeanor reimbursement could give smaller counties like his the ability to focus more on misdemeanor, juvenile and child in need of services cases.

In Noble County, Jim Abbs has been the chief public defender since 2002. His office handles 40% of all misdemeanor cases in Noble County.

Abbs said the Noble County office handled 959 total cases in 2022, with 50% of those being misdemeanor cases.

Noble County has been in complete compliance with Indiana Public Defender Commission guidelines for misdemeanor caseloads since 1997, Abbs said, when it joined the commission's felony reimbursement program.



Jim Abbs

That program reimburses 40% of expenses associated with handling felony cases.

All attorneys in the Noble County public defender's office can handle felony and misdemeanor cases.

If the PDC budget request to the Indiana Senate is approved by the Legislature, Noble County could see \$40,000-\$50,000 more in state funding.

With increased funding and more attorneys in public defender offices, Abbs said, "You're going to get, I believe, better representation. I believe you're going to get more efficient representation."

Abbs said the first year Noble County was in the PDC program, the county saw a \$30,000 decrease in terms of length of jail stays.

### **Legislative prospects**

It remains to be seen whether Holcomb's misdemeanor reimbursement funding request will be restored to the budget.

Sen. Liz Brown, R-Fort Wayne, said she would be supportive of restoring the funding.

Brown — who is a member of the Senate Appropriations Committee, which is reviewing the House budget — said the idea behind reimbursing county public defender offices for misdemeanor costs is that more counties would participate in the Indiana Public Defender Commission program if proposed funding and statutory authorization for the commission was approved.

She said the Public Defender Commission has made a good case for misdemeanor reimbursement. She also noted there was a deal in place in 1997 to reinstitute misdemeanor reimbursement funding for public defender offices, but it never materialized.

"I think it's probably an issue everywhere," she said. •



Liz Brown