

Public Defender Commission

Senate Budget Request

2-23-23

Request: (1) Restore the Governor’s proposed budget after the House cut the Public Defender Commission’s current appropriation and (2) restore the Governor’s proposed authorization language for the Commission to reimburse counties for a portion of their misdemeanor costs. NOTE: This reimbursement will not alter the existing right to counsel in misdemeanors. It only allows the state to assist counties for their constitutionally-mandated costs.

Governor’s Request (HB 1001 Introduced Version):

FOR THE PUBLIC DEFENDER COMMISSION		
Total Operating Expense	37,223,811	37,223,811
Public Defense Fund (IC 33-40-6)		
Total Operating Expense	7,400,000	7,400,000

The above public defense fund appropriation is made from the distribution authorized by IC 33-37-7-9(c) for the purpose of reimbursing counties for indigent defense services provided to a defendant. Administrative costs may be paid from the public defense fund. Any balance in the public defense fund is appropriated to the public defender commission. The public defender commission is authorized to spend up to \$6,300,000 of the above appropriations each year for reimbursement of misdemeanor cases. Reimbursement of cases shall not exceed 40% of the costs of those cases.

House Budget (HB 1001 as passed the House):

FOR THE PUBLIC DEFENDER COMMISSION		
Total Operating Expense	34,073,811	34,073,811
Public Defense Fund (IC 33-40-6)		
Total Operating Expense	7,400,000	7,400,000

The above appropriations from the public defense fund are made from the distribution authorized by IC 33-37-7-9(c) for the purpose of reimbursing counties for indigent defense services provided to a defendant. Administrative costs may be paid from the public defense fund. Any balance in the public defense fund is appropriated to the public defender commission.

Details:

1. Restore the Governor’s base budget to \$37,223,811 per year. This is only a \$2 million increase per year from the current budget; the House CUT the Commission’s existing budget by \$1.15 million per year.
2. Restore the Governor’s authorization language to allow the Commission to reimburse counties for misdemeanor expenses. (The language authorizes **UP TO** \$6.3 million/year, but not more).

NOTE: Authorization for Misdemeanor Expenses has been approved 4 times in recent history:

- Interim Study Committee on Corrections & Criminal Code (Final Report – 2020; adopted general language)
- Senate Corrections & Criminal Law Committee (SB 308 – 2022)
- House Courts & Criminal Code (HB 1405 – 2017; HB 1453 – 2019)

For further information, attached please find a document entitled “Misdemeanors Matter.”

For further information:

Andrew Cullen (Andrew.Cullen@pdcom.in.gov) 317-439-7565
Sabra Northam (sabra@hallowellconsulting.com) 765-235-9357

Mark W. Rutherford, Chairman
Indianapolis

Bernice Corley
Indianapolis
Samantha DeWester
Indianapolis
Hon. Mary Ellen Diekhoff
Bloomington
Hon. Kelsey B. Hanlon
Spencer
Representative Ragen Hatcher
Gary

309 W Washington Street Suite 501 • Indianapolis, IN 46204

Public Defender Commission



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

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

MISDEMEANORS MATTER: Why does the quality of public defense in misdemeanor cases matter and how does it improve the criminal justice system while saving the state money?

Background: There are currently 67 counties that receive a partial reimbursement from the Indiana's Public Defense Fund in exchange for following standards for the quality of public defense work set by the Indiana Public Defender Commission (Commission).

- The Commission has been in existence since 1989 but the ability to reimburse for misdemeanors was removed in 1997, primarily for fiscal reasons. *That was never intended to be permanent.*
- Non-reimbursement has resulted in an overload of cases in many counties.
 - In 2021, the average misdemeanor-only attorney worked about double the caseload that they would be allowed if misdemeanor standards were enforced. However, there are examples of full-time attorneys doing over 900 cases.
 - Standards would call for NO MORE than 300 cases.
- More crimes than ever are classified as misdemeanors (HB 1006 - 2014).

Collateral Consequences of Misdemeanor Convictions to Hoosiers: The consequences of a misdemeanor conviction can be significant, including loss of liberty, driving privileges, denial of educational loans, housing, employment opportunities or professional licenses.

- 61% of all adult criminal filings are misdemeanors.
- Access to counsel to explain these collateral consequences impacts plea agreement decisions by clients.
- Misdemeanor incarcerations are a leading cause of county jail overcrowding.
- Counsel was appointed in only 41% of misdemeanor cases.
- The high volume of misdemeanor cases in many courts can result in pressure for speedy dispositions and "assembly line justice."

Participation in the Commission's reimbursement program leads to SAVINGS in other parts of Indiana's Criminal Justice System.

- The lack of misdemeanor reimbursement is why some counties refuse to comply with Commission Standards for quality of public defense representation.
 - Based on data from the 2013-2021 period, Commission Counties have a 12% lower per-capita county jail population.
 - This difference is especially salient given the current struggles with jail overpopulation in many counties.
- Commission counties have a 20% lower rate of low-recidivism-risk individuals in DOC facilities.
 - One potential explanation for this difference is that higher quality public defense can more effectively procure alternative sentences for low-risk offenders, keeping them out of prison.
- Out-of-home placements by DCS in Commission counties are 20 days shorter than in non-commission counties.
 - There are 12,656 children in out-of-home care in Indiana as of July 2020. If each of these children had their time in foster care cut by 20 days this represents **\$5.8 million in cost savings**.
- Individuals in Commission counties receive on average 64-days shorter sentences in DOC facilities. In 2019 the DOC admitted 8,613 prisoners, with a reported per diem of \$55.92. If these savings above were realized for each of these prisoners, this is a potential **\$30.8 million in savings**.

Fiscal Impact: Permitting the reimbursement of misdemeanors would require a **\$6.2 Million Per Year Increase to the Public Defense Fund**.