

STATE OF INDIANA



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MEMORANDUM

TO: Governor Mitch Daniels
Chief Justice Randall T. Shepard
Hon. David C. Long, Senate President Pro Tempore
Hon. Vi Simpson, Senate Minority Leader
Hon. Luke Kenley, Chair, Appropriations Committee
Hon. John Broden, Ranking Minority Member, Appropriations Committee
Hon. Brandt Hershman, Chair, Tax and Fiscal Policy Committee
Hon. Timothy D. Skinner, Ranking Minority Member, Tax and Fiscal Policy
Hon. B. Patrick Bauer, Speaker of the House
Hon. Brian C. Bosma, House Minority Leader
Hon. Bill Crawford, Chair, House Ways and Means Committee
Hon. Jeffrey K. Espich, Ranking Minority Member, House Ways and Means
All Members of the Indiana General Assembly
All Associate Justices of the Indiana Supreme Court

FROM: Deborah Neal, Staff Counsel

DATE: August 2009

SUBJECT: 2008-2009 Annual Report of the Indiana Public Defender Commission

The Indiana Public Defender Commission's Annual Report for FY 2008-2009 provides an overview of the Public Defense Fund. The Commission's efforts during the past decade, in cooperation with the General Assembly and the Supreme Court, have contributed to important improvements in Indiana's system of indigent defense. The report explains the manner in which defense services are provided in Indiana for those who have a constitutional right to counsel at government expense and contains a brief history of the Commission's activities since its establishment in 1990.

Of the state's 92 counties, 57 have presented a Comprehensive Plan to the Commission to be a part of the Public Defense Fund program. These 57 counties represent over 65% of Indiana's population. To date, 48 of the program counties request and receive reimbursement for their public defense expenses quarterly. The state, through the Public Defense Fund, returned over \$15 million to the counties this fiscal year, easing somewhat their tax burden. This reimbursement from the Fund is the only state assistance given to the counties for their indigent defense expenditures. In contrast, the state contributes approximately \$50 million for judges' salaries and \$23.8 million for prosecutors' salaries. Indiana's 92 counties provide the majority of the more than \$63 million in tax dollars spent on indigent defense.

The Commission is authorized by statute to reimburse all 92 counties 50% of their defense expenditures in capital cases (death penalty). The Public Defense Fund's program counties may receive reimbursement up to 40% of their defense expenditures in non-capital indigent felony and juvenile delinquency cases if the counties comply with the Commission's Standards for defense services. (The Commission Standards are available at our website: www.in.gov/judiciary/pdc/).

The money used by the Commission to reimburse Indiana counties is from the Public Defense Fund (a non-reverting state fund). When the monies available through the Fund are inadequate to reimburse counties in the program for 40% of their eligible non-capital indigent defense expenditures, the Commission's statute requires that reimbursements be prorated. In FY 08-09, the Commission approved \$622,801 in death penalty defense claims (a decrease of \$132,326 from FY 07-08) and \$14.4 million in non-capital indigent defense claims (an increase of \$900,000 from FY 07-08). Reimbursement requests for two quarters of FY 08-09 had to be prorated for non-capital indigent defense claims – the second quarter at 34% and the fourth quarter at 33.9%. An average of 37% of non-capital requests for reimbursement was returned to the counties for their public defense costs in FY 08-09.

While the Commission appreciates that these are difficult financial times for the State of Indiana, we believe that the state's improved adversarial system of indigent defense merits the full backing of the legislature. Unlike other state-funded programs, the provision of adequate counsel to the poor in criminal and juvenile cases is guaranteed to all persons as a matter of constitutional right.

The Commission thanks the judicial and legislative branches of government for their past support of the public defense program. With the Public Defense Fund appropriation of \$18.2 million in FY09-10 and FY10-11 the Commission is closer to returning the full 40% of a county's request for reimbursement.

The Commission looks forward to working with you in continuing the progress that has been made to improve the quality of indigent defense services in Indiana. The goals of the Indiana Public Defender Commission include continuing to find a way to provide to Indiana's counties the reimbursements for defense costs upon which they have come to rely, and insuring that indigent defense services are provided responsibly throughout the state.