

Introduction

Long before the United States Supreme
Court's historic right to counsel case of
Gideon v. Wainwright in 1963, Indiana
recognized the right to counsel in the case
of Webb v. Baird. In 1854, the Supreme
Court of Indiana recognized the right to a
publicly paid attorney for persons facing
incarceration who could not otherwise afford
an attorney. This made Indiana the first state
in the Union to recognize such a right.

The burden of providing representation in Indiana has historically fallen upon each individual county. At the same time, the right to counsel is much more than just a technical requirement—it is the right to have a competent attorney who can protect the rights of each individual citizen to the fullest extent of the law. In order to assist counties with the financial burden of providing quality representation, the Indiana General Assembly created the Indiana Public Defender Commission.



Annual Report

Indiana Public Defender Commission 2014-2015

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Annual Report

Indiana Public Defender Commission 2014-2015

I. Statutory Duties

In response to serious concerns regarding the quality of publicly appointed defense attorneys in death penalty cases, the legislature created the Indiana Public Defender Commission in 1989 by P.L. 284-1989. The Commission's primary purposes were to: (1) recommend to the Indiana Supreme Court standards for indigent defense services provided for defendants against whom the State has sought the death sentence under I.C. 35-50-2-9; (2) adopt guidelines and salary and fee

schedules under which Indiana counties are eligible for reimbursement under I.C. 33-40-6; and (3) review and approve requests from county auditors for state reimbursement from the Public Defense Fund in capital (death penalty) cases.

In 1993, the legislature realized that the funding and quality of representation in non-death penalty cases was also a concern. Accordingly, it amended the Commission's statute in P.L. 283-1993. This change authorized reimbursement from the Public Defense Fund of 25% of a county's net expenditures in non-death penalty cases.

Effective July 1, 1997, the reimbursement level in non-death penalty cases was amended to provide 40% reimbursement of defense services in non-death penalty cases, except misdemeanors.

Under IC 33-40-5-4, the Commission is currently mandated to do the following:

- (1) Make recommendations to the Indiana Supreme Court concerning standards for indigent defense services provided for defendants against whom the State has sought the death sentence under IC 35-50-2-9, including the following subjects:
 - (A) Determining indigency and eligibility for legal representation.
 - (B) Selection and qualifications of attorneys to represent indigent defendants at public expense.
 - (C) Determining conflicts of interest.
 - (D) Investigative, clerical, and other support services necessary to provide adequate legal representation.
- (2) Adopt guidelines and standards for indigent defense services under

- which counties are eligible for reimbursement under IC 33-40-6, including the following:
- (A) Determining indigency and the eligibility for legal representation.
- (B) The issuance and enforcement of orders requiring defendants to pay for the costs of court appointed legal representation under IC 33-40-3.
- (C) The use and expenditure of funds in the county supplemental public defender services fund established by IC 33-40-3-1.
- (D) Qualifications of attorneys to represent indigent defendants at public expense.
- (E) Minimum and maximum caseloads of public defender offices and contract attorneys.
- (3) Make recommendations concerning the delivery of indigent defense services in Indiana.
- (4) Make an annual report to the Governor, the General Assembly, and the Supreme Court on the operation of the Public Defense Fund.

II. Commission Members

As the law was originally written, the commission had seven members: three appointed by the Governor; three appointed by the Chief Justice of Indiana; and one appointed by the Board of Trustees of the Indiana Criminal Justice Institute. In P.L.

283-1993, the General Assembly added four legislators to the Commission, ensuring adequate representation from all branches of the government. The following is a list of the Commission members, and their cities of residence, as of the date of this report:

Name	City	Appointed by
Mark W. Rutherford, Chairman	Indianapolis	Governor
David J. Hensel	Indianapolis	Governor
Mag. Andrew S. Roesener	Franklin	Governor
Hon. James R. Ahler	Rensselaer	Chief Justice
Hon. Diane Ross Boswell	Crown Point	Chief Justice
Hon. Mary Ellen Diekhoff	Bloomington	Chief Justice
Larry Landis	Indianapolis	Criminal Justice Institute
Rep. Ryan Dvorak	South Bend	Speaker of the House
Rep. Bill Fine	Highland	Speaker of the House
Sen. Gregory G. Taylor	Indianapolis	Senate President Pro Tempore
Sen. Brent Steele	Bedford	Senate President Pro Tempore

III. Commission Meetings

The Commission holds quarterly meetings open to the public. During FY 2014-2015, the Commission met on:

- September 17, 2014
- December 10, 2014
- March 18, 2015
- June 10, 2015

IV. Historical Summary of Indiana Public Defender Commission Activities

A. Capital Cases

The Commission held its initial meeting on January 29, 1990. The Commission's primary focus during its first year was the preparation of a proposed new court rule concerning the appointment and compensation of counsel to represent defendants in death penalty cases. In November 1990, the Commission submitted to the Supreme Court a proposed new court rule concerning these subjects. In June 1991, the Supreme Court issued a draft of a proposed amendment to Criminal Rule 24 regarding the appointment and compensation of counsel in capital cases, which incorporated many of the Commission's recommendations. After a response from the Commission, on October 25, 1991, the Supreme Court adopted amendments to Criminal Rule 24, effective January 1, 1992.

In 1991, the Commission adopted guidelines under which Indiana counties are eligible for reimbursement for indigent defense services in capital cases from the Public Defense Fund under IC 33-9-14 (recodified as IC 33-40-6). These

guidelines, effective January 1, 1992, require compliance with Criminal Rule 24.

In 1992, as a service to the trial courts and after consultation with then Chief Justice Randall T. Shepard, the Commission began maintaining a roster of attorneys who qualify for appointment in capital cases as either lead counsel, co-counsel, or appellate counsel based on their

1990

Public Defender Commission holds first meeting on January 29

experience and their compliance with training requirements specified in Criminal Rule 24. The roster is intended to aid trial judges in seeking qualified counsel when a death penalty charge is filed against an indigent defendant, although trial judges may appoint attorneys who are not on

the roster if they meet the qualifications specified in Criminal Rule 24. In March 1999, the roster became available via the Internet, now located at http://courts.in.gov/pdc/roster.html

Also during FY 1998-1999, the Commission studied and reported to the Chief Justice

regarding defense costs in several capital cases. The Commission offered to be involved, through staff, in assisting courts in budgeting for capital cases. At the request of trial court judges, the Commission also revised the form used by counties to submit claims for reimbursement in capital cases.



By law, the Commission recommends changes to Criminal Rule 24 to the Indiana Supreme Court.

Recognizing that a citizen may wish to represent him or herself, but still require the assistance of an attorney, the Commission also amended the capital guidelines to provide for reimbursement in situations where standby counsel has been appointed for a defendant who has waived the right to counsel. The Commission requires such counsel to meet the requirements for lead counsel under Criminal Rule 24.

2015

Hourly rate for public defense counsel in death penalty cases is raised to \$117.00

In FY 1999-2000, the Commission began studying the use of salaried public defenders as counsel in death penalty cases. The Marion County Public Defender Agency proposed using a full-time salaried public defender rather than an hourly paid attorney to handle death penalty cases.

Subsequently, the Supreme Court added a full-time salaried public defender provision to Criminal Rule 24 effective January 1, 2001.

During FY 2000-2001, the Commission amended its Guidelines in capital cases to provide that requests for reimbursement be submitted within 120 days of the date the county paid the underlying invoice. This amendment resulted in timelier filing of claims and more accurate budgeting by both the Commission and trial courts.

In response to the Commission's request for further rulemaking, the Indiana Supreme Court issued an order on May 29, 2013 amending Criminal Rule 24 that added to section (3) Workload of Appointed and Salaried Capital Counsel. This section included language accounting for the administrative duties of a chief or managing public defender in addition to caseload when determining eligibility to handle a death penalty case.

Criminal Rule 24(C)(1), of the Indiana Rules of Court, provides that the Executive Director of State Court Administration review and adjust the hourly rate for public defense counsel in death penalty cases biennially. As of January 1, 2015 the hourly rate is \$117.00.

B. Non-Capital Cases

While it is crucial to ensure quality and fair representation in cases that can result in the death penalty, the non-capital cases handled by Indiana's trial courts touch the lives of thousands of Hoosiers every year.

The Commission began its work on the adoption of standards for non-capital cases immediately after the enactment of P.L. 283-1993 (codified now as IC 33-40-5-4). On June 29, 1994, the Commission approved a draft of standards and authorized their distribution for comment to county auditors, commissioners, council members, judges, and public defenders. On September 1, 1994, the Commission reviewed the comments, made revisions, and adopted standards for non-capital cases, effective January 1, 1995. The Commission also authorized counties to phase in compliance so long as the County committed itself to bringing all indigent defense services into full compliance with the standards within a reasonable period of time.

Effective July 1, 1997, the Legislature enacted P.L. 202-1997, which increased reimbursements in non-capital cases from 25% to 40% of a county's indigent defense expenses in all non-capital cases, except misdemeanors.

While adult representation was the initial priority, on September 1, 1999, the Commission adopted a revision to Commission Standard E (4) regarding qualifications of counsel in juvenile delinquency matters. This revision gave consideration to juvenile court experience in qualifying counsel to handle juvenile delinquency matters. Previously, only adult felony experience was considered.

1994

Commission reviewed, revised, and adopted standards for non-capital cases

In FY 2003-2004, the Commission amended its Standards for Indigent Defense Services in Non-Capital Cases, Standard J, providing new juvenile caseload standards. This was done to reflect more realistically the different demands in time and resources necessary to provide diligent representation in the various types of juvenile cases in which lawyers provide representation.

During FY 2005-2006, the Commission determined that it needed to improve its information gathering for reimbursement requests and to monitor attorney caseloads more effectively. Accordingly, standardized forms were developed for counties to use when requesting quarterly reimbursements and certifying caseload compliance.

On July 13, 2006, the Commission approved a guideline that authorizes counties to explain and justify their accounting for non-reimbursable expenses in lieu of the Commission computing such expenses pursuant to a static mathematical formula. Non-reimbursable expenses include, for example, those incurred by a county for the appointment of a defense attorney for misdemeanor offenses and contempt charges in civil cases. Use of the prior formula penalized some counties by weighing more heavily their nonreimbursable cases than would be justified based upon examination of their actual non-reimbursable expenditures; and, conversely, the formula awarded some counties additional funds to which they would not be entitled if only actual nonreimbursable expenses were considered.

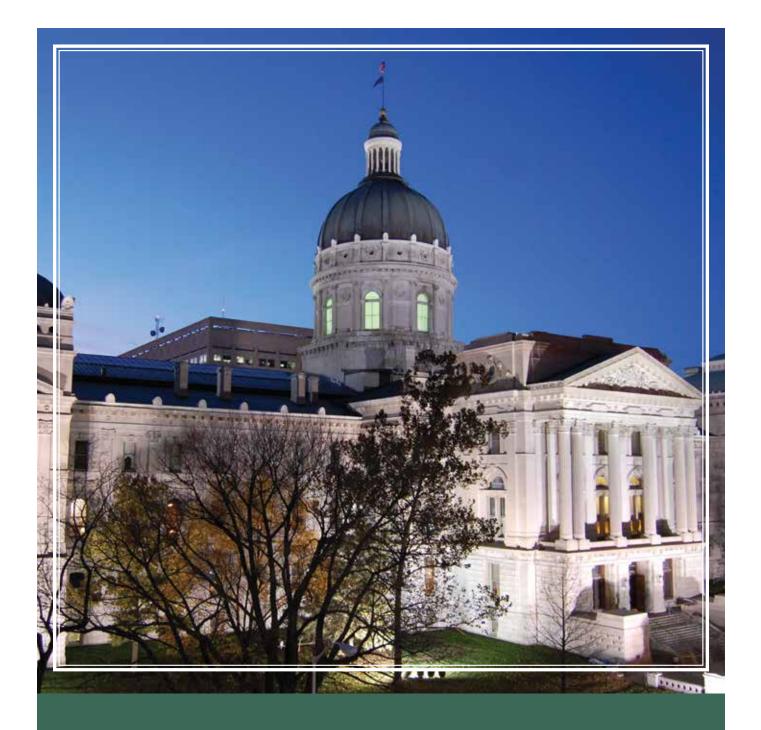
In September 2012, the Commission changed the minimum hourly rate for appointed counsel from \$60 to \$70 per hour beginning January 1, 2013. In June

2012

Hourly rate raised from \$60 to \$70 for appointed counsel

2013, the Commission amended its Standards for Indigent Defense Services in Non-Capital Cases by changing the wording in Standard G, Compensation of Salaried or Contractual Public Defenders, to say that full-time salaried public defenders shall have equal salaries and compensation to that of full-time deputy prosecutors, effective January 1, 2014.

Due to a \$2 million dollar additional appropriation provided by the General Assembly for the Public Defense Fund beginning in fiscal year 2013-2014, the Indiana Public Defender Commission voted to reimburse eligible counties for expenses incurred in Children in Need of Services ("CHINS") and Termination of Parental Rights ("TPR") cases. The Commission also adopted attorney qualification standards for CHINS and TPR cases and added them to Standard E while making counsel on these cases eligible for reimbursement after July 1, 2013.



2013-2014

The Commission began reimbursing counties for indigent defense expenses in CHINS and TPR cases due to additional funding from the legislature.

V. County Participation

From 1999 to 2015, the General Assembly approved increases in the general fund appropriation for the Public Defense Fund from \$2.4 million per year to \$14.85 million. As the funding for reimbursements increased, so did the number of counties participating in the reimbursement program.

In 1995, five counties joined the program and promised to abide by the Commission's Standards when the legislature allowed for reimbursement on felony public defense cases. Today, there are 61 counties that have created comprehensive plans for

delivering public defense services. (See Appendix B and back cover.)

Due to rapid growth in the number of participating counties, by 2001 the total dollar amount of claims began to exceed the amount available in the Fund to pay them. This lowered the reimbursements returned to the counties. By 2009, lower returns and economic conditions forced several counties to cut their defense budgets making them unable to meet the Standards set by the Commission and ineligible to participate in the reimbursements. At FY 14-15 closing, 55 counties were eligible for reimbursement of up to 40% of their public defense costs. These 55 counties comprise over 68% of the state's population.

County	Year Approved for Reimbursement
Adams	2000
Allen	2004
Benton	1998
Blackford	1999
Brown	2012
Carroll	2001
Cass	2013
Clark	1995
Crawford*	1999
Decatur	1999
Fayette	1999
Floyd	1997
Fountain	1999
Fulton	1998
Grant	2003
Greene	2000
Hancock	1999
Henry*	1999
Howard	2006
Howard	2004
Jasper	1999
Jay	2000
Jennings	1999
Knox	1999
Kosciusko	2000
LaGrange	2010
Lake	1999
LaPorte	1995
Lawrence	2011
Madison	1998
Marion	1995
Martin	1999

County	Year Approved for Reimbursement
Miami*	1995
Monroe	2000
Montgomery*	1995
Newton*	1999
Noble	2001
Ohio	1999
Orange	1995
Owen	2015
Parke	1996
Perry	2004
Pike	2001
Pulaski	1999
Ripley	2014
Rush	2001
Scott*	1999
Shelby	1999
Spencer	1999
St. Joseph	2007
Steuben	2001
Sullivan	1999
Switzerland	1999
Tippecanoe	2004
Union	1999
Vanderburgh	2000
Vermillion	1997
Vigo	1999
Wabash	2007
Warren	1996
Washington	2000
Wells*	2003
White*	2000
Whitley*	1999

^{*}Denotes a county that is presently not requesting or ineligible for reimbursement.

VI. Public Defense Fund (IC 33-40-6)

State reimbursement to the counties is paid from the Public Defense Fund, which is a dedicated, non-reverting state fund created in 1989 by I.C. 33-9-14. There are two sources of money for the Public Defense Fund: The State Auditor distributes yearly to the Fund from court fees, under IC 33-37-7-9(c), and appropriated money from the state general fund. The Legislature appropriated \$14.85 million for FY14-15, and the Auditor distributed \$7.4 million to the Fund. Combining the two sources of money, the Public Defense Fund received \$22.25 million to distribute to the counties for a portion of their public defense costs.

Capital case reimbursement is initiated by a written request from the county auditor to the Commission for the certified expenditures paid by the county. Upon determination by the Commission that the county auditor's capital defense request is in compliance with Commission Standards, the state court administrator certifies to the state auditor that the county should receive 50% of its approved expenditures for indigent defense services in the capital case. The state auditor then issues a warrant to the state treasurer for payment from the Public Defense Fund to the

1989

Public Defense Fund, a dedicated, non-reverting state fund is created

county for the amount certified. This same procedure is used for reimbursing eligible counties up to 40% of their expenditures in non-capital cases.

The state reimbursement to the counties from the Public Defense Fund is the only state assistance given to the counties for their expenditures in providing indigent defense services.

To assist the counties with state funds in FY 14-15 to cover the costs of death penalty cases, the Commission approved reimbursements totaling \$281,182 for public defense expenditures in capital cases. (See Appendix A for amount reimbursed by county.)

Also in FY 14-15, the Commission returned \$19,923,236 to the counties in the public defense program for expenditures in non-capital cases. (See Appendix C for amount reimbursed by county.)

Funding and Reimbursement History

* Denotes that totals reflect reimbursements approved for payment by the Commission during the particular fiscal year; totals in other years reflect actual amount reimbursed during the fiscal year.

Fiscal Year	# of Counties Eligible for Reimbursement	Annual Appropriation to PD Fund	Reimbursement Paid in Capital Cases	Reimbursement Paid in Non- Capital Cases	Total Reimburcement Paid	Loss due to prorated reimbursement	% of reimbursement received
1989-90		\$650,000					
1990-91		\$650,000	\$40,795		\$27,277		
1991-92		\$650,000	\$320,697		\$316,297		
1992-93		\$650,000	\$480,716		\$435,752		
1993-94		\$650,000	\$333,020		\$382,328		
1994-95		\$650,000	\$288,450		\$261,945		
1995-96	5	\$650,000	\$529,472	\$668,747	\$1,173,912		
1996-97	7	\$650,000	\$370,959	\$628,841	\$999,888		
1997-98	9	\$3,000,000	\$799,449	\$1,031,467	\$1,830,917		
1998-99	17	\$3,000,000	\$526,525	\$2,188,699	\$2,715,211		
1999-00	30	\$2,400,000	\$378,209	\$3,302,471	\$3,680,680		
2000-01	38	\$2,400,000	\$712,054	\$3,669,318	\$4,381,373		
2001-02	50	\$6,000,000	\$473,317	\$4,869,314	\$5,342,631	\$2,036,380	28.2%
2002-03	50	\$7,000,000	\$413,805	\$5,371,364	\$5,785,169	\$1,619,285	30.7%
2003-04	52	\$7,000,000	\$478,222	\$6,030,992	\$6,601,465	\$1,403,053	25.1%
2004-05	53	\$8,000,000	\$672,381	\$8,524,652	\$9,096,150	\$771,538	36.9%
2005-06	53	\$9,000,000	\$386,288	\$7,305,318	\$7,938,766	\$895,476	35.6%
2006-07	54	\$10,000,000	\$844,769	\$10,175,448	\$10,838,759	\$2,674,834	30.9%
2007-08	53	\$14,500,000	\$753,772	\$13,586,669	\$14,005,880	\$825,367	38.4%
2008-09	48	\$15,250,000	\$742,251	\$14,411,615	\$15,074,416	\$1,262,700	37.0%
2009-10	50	\$18,250,000	\$618,252	\$15,376,845	\$15,995,098	\$0	40.0%
2010-11	52	\$18,250,000	\$370,709	\$15,707,861	\$16,078,570	\$0	40.0%
2011-12	53	\$20,250,000	\$532,706	\$20,722,547	\$21,255,253	\$0	40.0%
2012-13*	53	\$20,250,000	\$381,459	\$17,546,818	\$17,928,277	\$0	40.0%
2013-14*	54	\$22,250,000	\$421,935	\$18,693,834	\$19,115,769	\$0	40.0%
2014-15*	55	\$22,250,000	\$268,182	\$19,923,236	\$20,191,418	\$0	40.0%
TOTALS		\$214,250,000	\$12,138,395	\$189,736,056	\$201,860,953	\$11,488,633	

APPENDIX A

County Reimbursements for Indigent Defense Expenses (Capital)

2014-2015 Detail

County	Defendant	2Q14 9/17/14 Mtg	3Q14 12/10/14 Mtg	4Q15 03/18/15 Mtg	1Q15 6/10/15 Mtg	Total
Clark	Hooten	\$20,769.69				\$20,769.69
Clark	Oberhansley			\$8,104.64	\$16,108.68	\$24,213.32
Floyd	Gibson	\$20,098.72	\$35,330.42	\$39,258.31		\$94,687.45
Harrison	Schuler		\$10,072.57			\$10,072.57
Harrison	Scott	\$14,672.56	\$23,072.80			\$37,745.36
Lake	Blount		\$2,682.35	\$10,786.05	\$9,503.72	\$22,972.12
Lake	Isom	\$3,260.88	\$4,378.20			\$7,639.08
Lake	Vann				\$7,204.30	\$7,204.30
Marion	Davis			\$7,957.27	\$15,656.61	\$23,613.88
Marion	Rackemann			\$9,576.25	\$9,687.60	\$19,263.85
Total		\$58,801.85	\$75,536.34	\$75,682.52	\$58,160.91	\$268,181.62

APPENDIX B

County Eligibility Status for Reimbursement in Cases (Non-Capital)

as of June 30, 2015

County	Ordinance Adopted	P.D. Board Established	Comprehensive Plan Adopted	Plan Approved by Commission	In Compliance with Standards
1 Adams	X	X	X	X	X
2 Allen	X	X	X	X	X
3 Benton	*	*	X	X	X
4 Blackford	X	X	X	X	X
5 Brown	X	X	X	X	X
6 Carroll	X	X	X	X	X
7 Cass	X	X	X	X	X
8 Clark	X	X	X	X	X
9 Crawford	*	*	X	X	
10 Decatur	X	X	X	X	X
11 Delaware	X	X	X	X	X
12 Fayette	X	X	X	X	X
13 Floyd	X	X	X	X	X
14 Fountain	X	X	X	X	X
15 Fulton	X	X	X	X	X
16 Grant	X	X	X	X	X
17 Greene	X	X	X	X	X
18 Hancock	X	X	X	X	X
19 Henry	X	X	X	X	
20 Howard	X	X	X	X	X
21 Jasper	X	X	X	X	X
22 Jay	X	X	X	X	X
23 Jennings	X	X	X	X	X
24 Knox	X	X	X	X	X
25 Kosciusko	X	X	X	X	X
26 Lagrange	X	X	X	X	X
27 Lake	X	X	X	X	X

^{*} Board not required for counties with populations fewer than 12,000 † Denotes county not requesting, or ineligible for, reimbursement as of FY end

County	Ordinance Adopted	P.D. Board Established	Comprehensive Plan Adopted	Plan Approved by Commission	In Compliance with Standards
28 LaPorte	X	X	X	X	X
29 Lawrence	X	X	X	X	X
30 Madison	X	X	X	X	X
31 Marion	X	X	X	X	X
32 Martin	*	*	X	X	X
33 Miami	X	X	X	X	
34 Monroe	X	X	X	X	X
35 Montgomery	X	X	X	X	
36 Newton	X	X	X	X	
37 Noble	X	X	X	X	X
38 Ohio	*	*	X	X	X
39 Orange	X	X	X	X	X
40 Owen	X	X	X	X	X
41 Parke	X	X	X	X	X
42 Perry	X	X	X	X	X
43 Pike	X	X	X	X	X
44 Pulaski	X	X	X	X	X
45 Ripley	X	X	X	X	X
46 Rush	X	X	X	X	X
47 St. Joseph	X	X	X	X	X
48 Scott	X	X	X	X	
49 Shelby	X	X	X	X	X
50 Spencer	X	X	X	X	X
51 Steuben	X	X	X	X	X
52 Sullivan	X	X	X	X	X
53 Switzerland	*	*	X	X	X
54 Tippecanoe	X	X	X	X	X
55 Union	*	*	X	X	X
56 Vanderbrgh	X	X	X	X	X
57 Vermillion	X	X	X	X	X
58 Vigo	X	X	X	X	X
59 Wabash	X	X	X	X	X
60 Warren	*	*	X	X	X
61 Washington	X	X	X	X	X
62 Wells	X				
63 White	X	X	X	X	
64 Whitley	×	X	X	X	

^{*} Board not required for counties with populations fewer than 12,000 † Denotes county not requesting, or ineligible for, reimbursement as of FY end

APPENDIX C

County Reimbursements for Indigent Defense Expenses (Non-Capital)

Fiscal Year 2014-2015

County	Reimbursement
Adams	\$103,874.73
Allen	\$1,262,616.82
Benton	\$23,419.04
Blackford	\$54,709.54
Brown	\$50,189.58
Carroll	\$70,009.52
Cass	\$164,738.46
Clark	\$254,043.88
Decatur	\$62,160.28
Delaware	\$452,597.24
Fayette	\$102,952.00
Floyd	\$272,593.04
Fountain	\$33,467.89
Fulton	\$88,750.10
Grant	\$370,010.17
Greene	\$147,281.04
Hancock	\$191,346.02
Howard	\$495,249.35
Jasper	\$75,546.97
Jay	\$111,596.84
Jennings	\$74,854.93
Knox	\$231,307.87
Kosciusko	\$206,941.82
Lagrange	\$58,576.18
Lake	\$1,446,170.92
LaPorte	\$250,644.99
Lawrence	\$235,665.49
Madison	\$ 699,077.70

County	Reimbursement
Marion	\$6,990,643.55
Martin	\$93,937.32
Monroe	\$717,430.68
Noble	\$195,173.57
Ohio	\$25,203.61
Orange	\$64,794.32
Owen	\$15,533.40
Parke	\$36,705.31
Perry	\$93,873.90
Pike	\$90,932.85
Pulaski	\$59,733.10
Ripley	55,990.46
Rush	\$91,426.65
St. Joseph	\$738,158.52
Shelby	\$157,758.83
Spencer	\$58,135.02
Steuben	\$118,438.89
Sullivan	\$18,205.39
Switzerland	\$53,971.23
Tippecanoe	\$733,822.94
Union	\$27,739.11
Vanderburgh	\$869,169.08
Vermillion	\$44,078.01
Vigo	\$690,893.12
Wabash	\$102,441.18
Warren	\$11,368.92
Washington	\$177,285.11
Total	\$19,923,236.50

