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Program restarts state reimbursement for public defenders' misdemeanor cases

Editorial board | The Journal Gazette

For more than 25 years, Indiana's public defender offices have contended with a lack of state funding for misdemeanor cases.

With 65% of all adult criminal filings being misdemeanors, offenses that can be punishable by up to one year in prison, this chronic underfunding has burdened counties and compromised the right to adequate legal representation for many Hoosiers. The recent legislative session, however, marked an improvement with a novel approach to address these challenges.

Crafted by a bipartisan group of senators, including Liz Brown, R-Fort Wayne, and signed into law by Gov. Eric Holcomb, Senate Enrolled Act 179 authorizes a pilot program that reintroduces state reimbursement for misdemeanor defense.

The original bill outlined pilot counties, including Allen, Adams and DeKalb. However, the signed bill authorizes the Indiana Public Defenders Commission to establish a four-year program in a dozen counties selected according to population and geographic diversity.

The pilot should begin on July 1, 2025. Given our population size, we will be surprised if Allen is not selected.

The reestablishment of misdemeanor payments was long overdue. According to Indiana Public Defender Commission's Andrew Cullen, the ability to reimburse for misdemeanors was removed in 1997 for fiscal reasons. But it was never intended to be permanent.

Since then, misdemeanor cases have skyrocketed, and the caseload has grown out of control.

Depending on staffing, the Public Defender Commission guidelines set the maximum yearly caseload for a full-time public defender who handles misdemeanor cases to be between 300 and 400, said Cullen, the commission's director of public policy and communication. These standards are not enforced — leading to outrageous working conditions.

"I've heard of at least one extreme case where a public defender handled about 900 cases," Cullen said before adding that the average misdemeanor-only attorney works upwards of 500 cases annually.

Adding the caseload problem to the fact that 97% of misdemeanor cases are settled out of court, Cullen's use of the term "assembly line justice" is neither banal nor hyperbolic but an indictment of how justice is dispensed.

Cullen made a persuasive case for ending the assembly line. With a manageable caseload, a qualified and trained public defender could investigate a case more deeply to determine whether a client needs, for example, a push toward a rehabilitative program or job training.

This is, without a doubt, in keeping with Section 18 of the Indiana Constitution: “The penal code shall be founded on the principles of reformation, and not of vindictive justice.”

Any reduction in the assembly line would be welcome for Allen County, which is contending with jail overcrowding. However, there is a caveat — establishing indigency.

According to Cullen, judges have had discretion in this matter. The pilot program requires the Office of Judicial Administration to create a uniform indigency determination form for all trial courts to use in appointing counsel in criminal cases.

The Legislative Services Agency wrote in the fiscal impact statement, “However, the bill is silent on the type of format required for the indigency determination form.”

Suppose a county’s presiding judge — or one who leads the misdemeanor cases — decides not to concede that discretion. In that case, they forfeit the opportunity to participate in the pilot.

While determining indigency is central to this pilot, what’s important right now is that this initiative, coming from the GOP supermajority, represents a substantial shift toward recognizing the profound impact the defunding of public defense has had on defendants, lawyers, judges and counties.

We’re happy the Indiana General Assembly found a way to seek new answers to this problem.