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TO: Joseph Habig, Director
State Budget Agency

DATE: August 13, 2024

RE: FY 24-25 Budget Transmittal Letter

I. IMPROVING THE QUALITY OF PUBLIC DEFENSE IN INDIANA

The right to counsel is enshrined in both the Indiana and United States Constitutions, Indiana Statute, and federal and state case law. The Sixth Amendment guarantees the effective assistance of counsel to those charged with an offense but who cannot afford an attorney. In Indiana, the burden of providing public defense presently falls upon each individual county. Since 1989, the Commission on Court Appointed Attorneys (Commission) has reimbursed over \$460 million to counties for their public defense services. At the same time, it is estimated that in the next biennium, current Commission counties will spend in excess of \$110 million *per year* fulfilling their constitutionally mandated public defense obligations. This total does not include what the remaining 25 counties spend on public defense expenses. The Commission's reimbursement remains the only state assistance to counties for these expenses.

The Commission was created in 1989 to: 1) recommend to the Indiana Supreme Court death penalty (capital) representation standards for publicly appointed attorneys; 2) adopt guidelines for counties to be eligible for reimbursement of 50% of their death penalty public defense expenses; and 3) review and approve requests from county auditors for Commission reimbursement.

In 1993, the Indiana Legislature recognized the unacceptable state of public defense on non-death penalty cases. It authorized the Commission to create standards for publicly appointed attorneys in those cases and to reimburse counties for a portion of the associated costs, provided the county committed to abide by all Commission Standards. State statute currently authorizes the Commission to reimburse each participating county up to 40% of all non-death penalty public defense expenses, excluding misdemeanors. County participation in the Commission reimbursement program remains completely voluntary.

In 2024, the Indiana Legislature granted the Commission the ability to begin a misdemeanor reimbursement pilot program as early as July 1, 2025. The Commission will also become a recipient of a portion of public defense user fees in FY 25.

The Commission's non-death penalty standards and guidelines primarily require: 1) public attorney experience and education; 2) public caseload maximums; 3) minimum pay for public defenders based upon each county's prosecutor office (or a minimum hourly rate); and 4) independence from the judicial and prosecuting functions by requiring the establishment of a local public defender board. The Commission's operations are completely funded out of the Public Defense Fund. With increasing demands on county courts to provide indigent persons with attorneys and ongoing pressure on county dollars due to inflation and property tax caps, adequate funding is absolutely crucial to ensure that Indiana citizens' constitutional rights are safeguarded.

II. SUCSESSES AND CHALLENGES

A. THE COMMISSION HAS SUCCESSFULLY ACHIEVED ITS GOALS AND DIRECTIVES

Below are a few of the primary metrics that were successful in the present biennium.

1. **Separate from reimbursement, Indiana and its participating counties enjoy significant financial and humanitarian benefits, such as:**

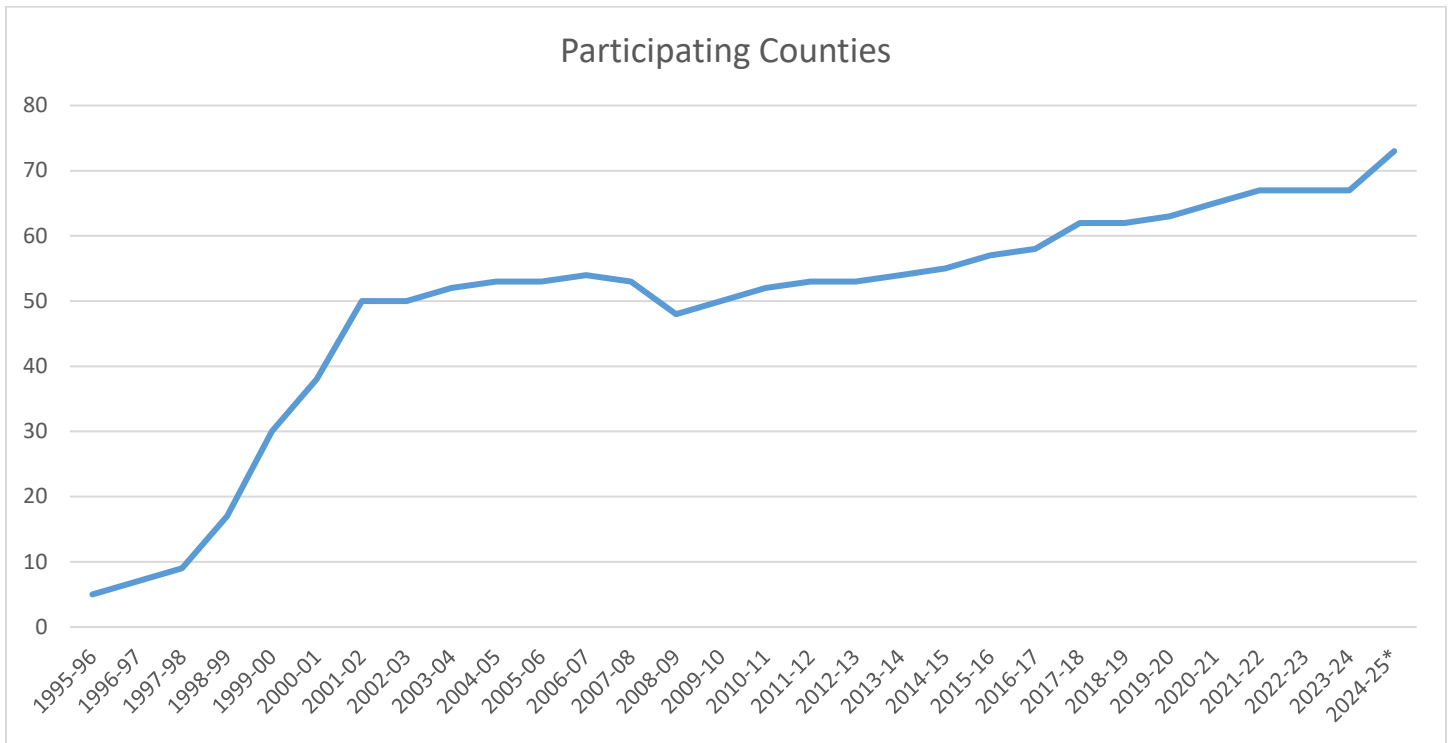
Participating County Vs. Non-Participating Counties

Commission Counties have:

- 12% lower per-capita jail population
- 20% lower rate of "Low Recidivism Risk" individuals in DOC
- Nearly three weeks less time children are placed outside of the home in CHINS cases
- 64 days shorter DOC commitments

2. **The Commission has seen expanded county participation since 2009.**

Through proactive recruitment, the Commission has achieved 67 counties participating in non-capital reimbursement and a possible record 69 counties could participate as early as the conclusion of the existing biennium. Based upon currently interested counties, we anticipate as many as a total of six new counties could join between this fiscal year and the conclusion of the next biennium.

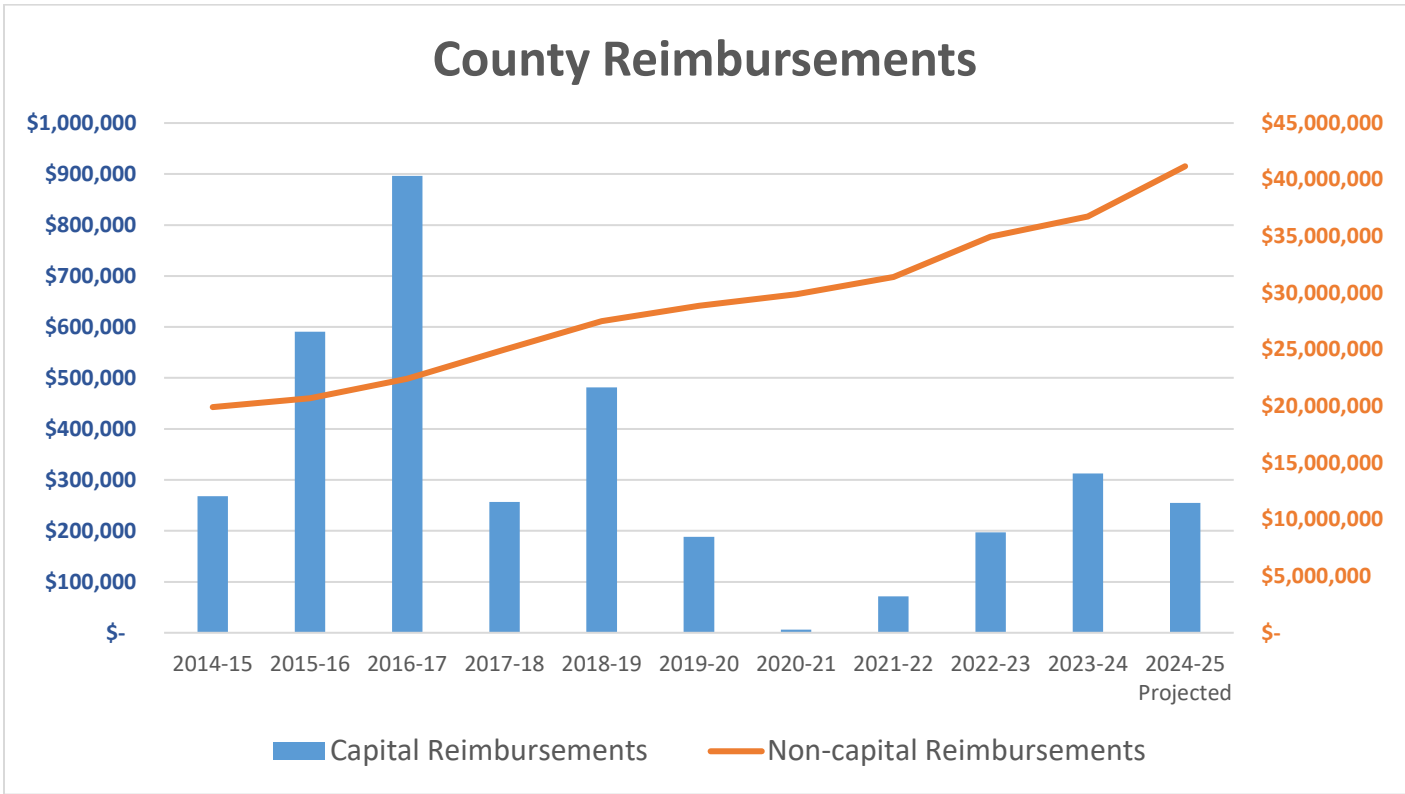


3. The Commission was able to reimburse 100% of requested, eligible funds each fiscal year this biennium.

History has shown that if counties do not receive full reimbursement, they will leave the program. Between FY '02 and FY '09, the Commission lacked sufficient funding and was unable to fulfill \$11,488,633 in non-death penalty reimbursement requests, which caused a drop in county participation. Since FY '10 the Commission has been able to fully meet 100% of its financial obligations to participating counties while continuing to expand participation to a record number of counties. This level of reimbursement is made possible by continued increases in funding for the Public Defense Fund and the fact that approximately 3% of the fund's annual revenue has historically gone to overhead expenses.

B. CHALLENGES RESULTING IN RISING COSTS

The Public Defense Fund is facing several challenges both now and throughout the next biennium as county reimbursements continue to set records. On a per capita basis, the number of attorneys working in Indiana is significantly below the national average. In 2020, Indiana lost one of its four law schools which has exacerbated this problem. As the supply of attorneys decreases and demand holds steady or increases, the cost to counties to provide public defense has and will continue to increase. We are hopeful that the Supreme Court's recently created Commission on Indiana's Legal Future and future legislatures will implement changes that will encourage an increase in the number of attorneys practicing in Indiana. You can see in the graph below that county reimbursement costs continue to rise which is expected to continue throughout the next biennium.



1. Indiana has an attorney shortage compared to other states.

As discussed briefly above, the Commission has discovered that Indiana counties have less than half of the national per-capita number of lawyers. The economic impact of so few attorneys available to practice public defense necessarily results in higher compensation to persuade attorneys to do this work. Counties are currently reporting to the Commission an inability to find counsel at their current rates of pay. As compensation increases to help equalize supply and demand (which will likely be a long-term issue), the costs submitted to the Commission will continue to increase. The Commission has recently launched a job listing site to help provide further assistance to counties.

2. Record county participation and interest continues.

As mentioned above, it is a victory for the Commission and the State of Indiana that participation in reimbursement has reached 67 counties. The Commission anticipates as many as 69 participating counties through the conclusion of the current fiscal year and as many as 73 counties through the next biennium. While this is a victory, increased participation always represents a challenge to the Commission’s budget and our primary effort of maintaining the full, promised 40% reimbursement.

III. OBJECTIVES FOR THE NEXT BIENNIUM: CHANGE PACKAGES

The Commission continues to review and update its standards based upon the best available information and public defense data both nationally and within Indiana. Evaluation of available county and state data repeatedly illustrates that compliance with Commission standards improves outcomes for Indiana citizens and lowers costs to other state entities such as the Department of Child Services and the Department of Corrections, as well as

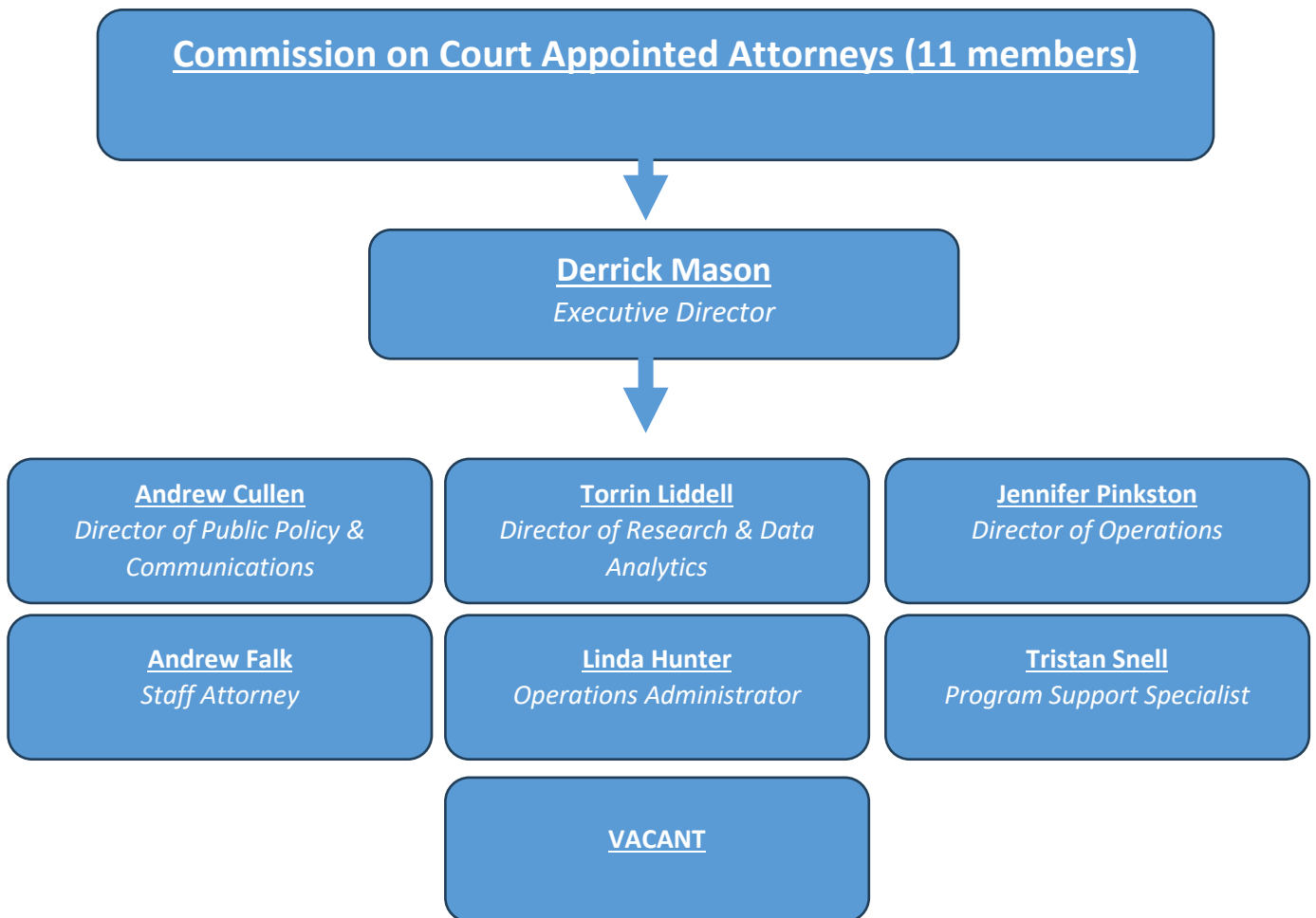
reducing the impact on local county jails. Thus, the Commission is dedicated to increasing participation in the Commission and maintaining compliance with its standards for public defense. In order to do that, the Public Defense Fund must be sufficiently funded to reimburse every participating county the full 40% promised to them in the Indiana Code, without risk of proration.

Further, the Commission is launching its legislatively-granted misdemeanor pilot program as early as July 1, 2025. This pilot initiative will not conclude during the upcoming biennium.

CHANGE PACKAGES

At this time, the Commission is not submitting any change packages.

ORGANIZATIONAL CHART



The Commission remains committed to enhancing public defense services in Indiana. Thank you for your consideration of this request.