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MEMORANDUM

TO: Governor Mike Pence
Chief Justice Loretta H. Rush
Sen. David Long, Senate President Pro Tempore
Sen. Timothy Lanane, Senate Minority Leader
Sen. Luke Kenley, Chair, Appropriations Committee
Sen. Karen Tallian, Ranking Minority Member, Appropriations Committee
Sen. Brandt Hershman, Chair, Tax and Fiscal Policy Committee
Sen. John Broden, Ranking Minority Member, Tax and Fiscal Policy
Rep. Brian Bosma, Speaker of the House
Rep. Scott Pelath, House Minority Leader
Rep. Timothy Brown, Chair, House Ways and Means Committee
Rep. Gregory Porter, Ranking Minority Member, House Ways and Means
All Members of the Indiana General Assembly
All Associate Justices of the Indiana Supreme Court

FROM: Mark Rutherford, Chairman *mwr*

DATE: December 2014

SUBJECT: 2013-2014 Annual Report of the Indiana Public Defender Commission

The Indiana Public Defender Commission's Annual Report for FY 2013-2014 provides an overview of the purpose and use of the Public Defense Fund. The Commission's efforts during the past twenty-four years, in cooperation with the General Assembly and the Indiana 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.

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 participating counties may also 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's Standards are always available at our website: www.courts.in.gov/pdc.

Of the state's 92 counties, 64 have presented a Comprehensive Plan to the Commission to participate in the Public Defense Fund reimbursement program. To date, 54 of the participating counties request and receive reimbursement for their non-capital indigent defense expenses. These 54 counties represent over 68% of Indiana's population. The state, through the Public Defense Fund, returned in excess of \$19.1 million to the counties this fiscal year, easing 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 \$61 million for trial judges' salaries and nearly \$29 million for prosecutors' salaries; both numbers exclude pensions and benefits also provided by the state. Indiana's 92 counties are directly responsible to provide the majority of the approximately \$70 million in tax dollars spent on indigent defense in Indiana every year.

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 in 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. From 2002 to 2009, county reimbursements averaged only 33% due to prorating. In FY 2013-2014, qualifying counties received the full 40% reimbursement on eligible non-capital public defense expenses.

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. Adequate funding for indigent defense is under ever-increasing scrutiny. Unlike other state-funded programs, the provision of adequate counsel in criminal and juvenile cases is guaranteed to all persons as a matter of constitutional right. This year the U.S. Department of Justice filed a statement of interest in a New York class-action lawsuit which alleges inadequate funding for indigent defense in that state.

The Commission thanks the judicial and legislative branches of government for their past support of the public defense reimbursement program. With the Public Defense Fund appropriation of \$22.25 million in FY13-14 and FY 14-15, the Commission expects to be able to continue returning the full 40% of a county's request for reimbursement of indigent defense costs through the end of FY 14-15.

The Commission looks forward to working with you to continue 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.