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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 2015

SUBJECT: 2014-2015 Annual Report of the Indiana Public Defender Commission

The Commission's Annual Report for FY 2014-2015 provides an overview of the purpose and use of the Public Defense Fund. The year 2015 marked the Indiana Public Defender Commission's 25th Anniversary. Over the past twenty-five (25) years the Commission, in cooperation with the General Assembly and the Indiana Supreme Court, has 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, a record 55 participating counties requested and received reimbursement for their non-capital indigent defense expenses during the fiscal year. These 55 counties represent over two-thirds of Indiana's population. The state, through the Public Defense Fund, returned in excess of \$19.9 million to the counties this fiscal year, easing their tax burden. The Commission also authorized nearly \$300,000 in reimbursement for capital cases. These reimbursements from the Fund are 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 \$29 million for prosecutors' salaries; both numbers exclude pensions and benefits which are also provided by the state. Indiana's 92 counties are directly responsible to provide the majority of the more than \$73 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 2014-2015, qualifying counties received the full 40% reimbursement on eligible non-capital public defense expenses.

The Commission believes that improving the state's 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 Sixth Amendment Center has evaluated the state of Indiana's indigent defense system and a report is expected in early 2016. In the meantime, recent lawsuits across the country regarding inadequate indigent defense and inadequate funding have begun to be filed in Indiana.

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 FY14-15 and FY 15-16, 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 15-16.

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.