

Mark W. Rutherford, Chairman
Indianapolis

Bernice Corley
Indianapolis
Samantha DeWester
Indianapolis
Hon. Mary Ellen Diekhoff
Bloomington
Hon. Kelsey B. Hanlon
Spencer
Representative Ragen Hatcher
Gary

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David J. Hensel
Indianapolis
Senator Eric Koch
Bedford
Representative Ryan Lauer
Columbus
Hon. Steven P. Meyer
Lafayette
Senator Gregory G. Taylor
Indianapolis

www.in.gov/publicdefender • ph 317-233-6908

Public Defender Commission

MEMORANDUM

TO: Governor Eric J. Holcomb
Lieutenant Governor Suzanne Crouch
Chief Justice Loretta H. Rush
All Associate Justices of the Indiana Supreme Court
Sen. Rodric Bray, Senate President Pro Tempore
Sen. Greg Taylor, Senate Minority Leader
Sen. Ryan Mishler, Chair, Senate Appropriations Committee
Sen. Eddie Melton, RMM, Senate Appropriations Committee
Rep. Todd Huston, Speaker of the House
Rep. Phil GiaQuinta, House Minority Leader
Rep. Jeff Thompson, Chair, House Ways and Means Committee
Rep. Gregory Porter, RMM, House Ways and Means Committee
All Members of the Indiana General Assembly

FROM: Mark W. Rutherford, Chairman

DATE: December 2023

SUBJECT: FY 2022-2023 Annual Report of the Indiana Public Defender Commission

A handwritten signature in black ink, appearing to read "Mark W. Rutherford".

The Indiana Public Defender Commission's (Commission) Annual Report for Fiscal Year 2022-2023 provides an overview of the purpose and use of the Public Defense Fund. In cooperation with the General Assembly and the Indiana Supreme Court, the Commission has established and revised its standards for public defense services in both death penalty and non-death penalty cases. The report contains a brief history of the Commission, its responsibilities, and its reimbursements. It also discusses some of the Commission's upcoming goals and obstacles.

The Commission is authorized by statute to reimburse all 92 counties for 50% of their defense expenditures in capital (death penalty) cases. The Public Defense Fund's participating counties may also receive reimbursement of up to 40% of their defense expenditures in non-capital felony, juvenile delinquency, and Children in Need of Services and Termination of Parental Rights (CHINS/TPR) cases if the counties comply with the Commission's standards for defense services. The Commission's standards are always available online at: www.in.gov/publicdefender. The Commission is prohibited via statute from reimbursing misdemeanor expenditures.

Sixty-seven (67) counties requested and received reimbursement for their non-capital public defense expenses during the fiscal year, representing over two-thirds of Indiana's population. During this time, the State of Indiana, through the Public Defense Fund, returned over \$34.9 million to the counties for these expenses, easing their budgetary burdens. The state's attorney shortage, on a per capita basis compared to the national average, is contributing to the continuing increase in county non-capital public defense expenses. The Commission also authorized nearly \$200,000 in death penalty reimbursement during the fiscal year.

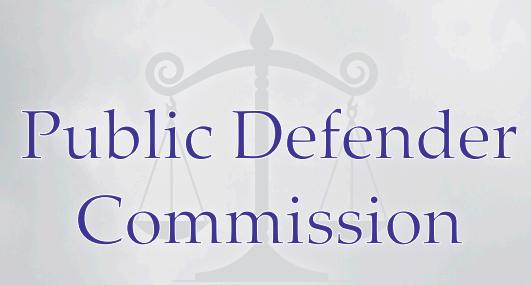
Indiana's 92 counties are directly responsible for the majority of the more than \$100 million in tax dollars spent on public defense in Indiana each year. A large portion of these tax dollars are spent on the defense of misdemeanor cases for which the state currently provides no assistance to counties.

During the upcoming 2024 Legislative Session, the Commission will seek statutory authorization to reimburse for misdemeanor expenses in a limited number of counties and provide a comprehensive report to the State Budget Committee and the Legislative Council.

In order to clarify the difference between the Indiana Public Defender Council and the Office of the State Public Defender, the Commission will also seek statutory approval to change its agency name to "The Indiana Commission on Court Appointed Attorneys."

The Commission looks forward to working with you to continue improving the quality of public defense services in Indiana. The goals of the Commission include continued reimbursement to Indiana's counties for the public defense costs they are constitutionally obligated to incur while simultaneously ensuring effective and responsible public defense services throughout the state.

Thank you for your continued commitment to guarantee the constitutional rights of Indiana's residents. Please do not hesitate to contact us if we may provide any additional information.



2022-2023 Annual Report

Introduction

Indiana has been a long-standing leader in providing attorneys to individuals who are unable to afford private legal counsel in criminal or family law cases. While the United States Supreme Court did not declare the right to an attorney to be a constitutional right until 1963, the Indiana Supreme Court recognized that any person whose liberty rights were in jeopardy deserved an attorney in 1854.

All states are required to provide competent attorneys to those unable to pay. In Indiana, because counties are a creation of the state, those counties are required to provide that representation.

The State of Indiana created the Indiana Public Defender Commission to provide support to counties, if they choose to follow the Commission's standards and guidelines - requiring appropriate caseloads, experience, and compensation to attorneys who provide this legal representation.

Since the Commission was created in 1989, it has reimbursed nearly \$400 million in state funding to the counties and regions interested in joining the reimbursement program. Currently, 67 of Indiana's 92 counties participate, covering approximately two-thirds of Indiana's population.

The Commission is an eleven-member, independent, judicial branch state governing board. The membership is set by state statute and is composed of 3 members appointed by the Governor, 3 members appointed by the Chief Justice, 2 members appointed by the President Pro Tempore of the Senate, 2 members appointed by the Speaker of the House, and 1 member appointed by the Indiana Criminal Justice Institute. Members serve four-year terms.

Indiana Public Defender Commission

(317) 233-6908

www.in.gov/publicdefender
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Cover photo: Vigo County Courthouse

Chris Flook, Ball State University

Commission Members



Mark W. Rutherford,
Chairperson
Hamilton County
Appointed by the Governor
Term Expires: 10.31.25



Bernice A. N. Corley
Marion County
*Appointed by the Indiana
Criminal Justice Institute*
Term Expires: 09.06.23



Samantha DeWester
Marion County
Appointed by the Governor
Term Expires: 10.31.25



Judge Mary Ellen Diekhoff
Monroe County
Appointed by the Chief Justice
Term Expires: 05.17.26



Judge Kelsey Hanlon
Owen County
Appointed by the Chief Justice
Term Expires: 10.06.26



Rep. Ragen Hatcher
Lake County
*Appointed by the
Speaker of the House*
Term Expires: 06.01.24



David Hensel
Marion County
Appointed by the Governor
Term Expires: 10.31.25



Sen. Eric Koch
Lawrence County
*Appointed by the President
Pro Tem of the Senate*
Term Expires: 07.01.24



Rep. Ryan Lauer
Bartholomew County
*Appointed by the
Speaker of the House*
Term Expires: 07.10.24



Judge Steven Meyer
Tippecanoe County
Appointed by the Chief Justice
Term Expires: 04.24.24



Sen. Greg Taylor
Marion County
*Appointed by the President
Pro Tem of the Senate*
Term Expires: 07.01.23

Commission Staff



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Tristan Snell
Program Support Specialist
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At Risk Youth and Family Pilot Projects

Using funding appropriated during the biennium, the Commission has partnered with four counties to implement pilot projects using social workers or system navigators to assist clients involved in Child in Need of Services (CHINS), Termination of Parental Rights (TPR), and juvenile delinquency cases.

The primary goals of these projects are:

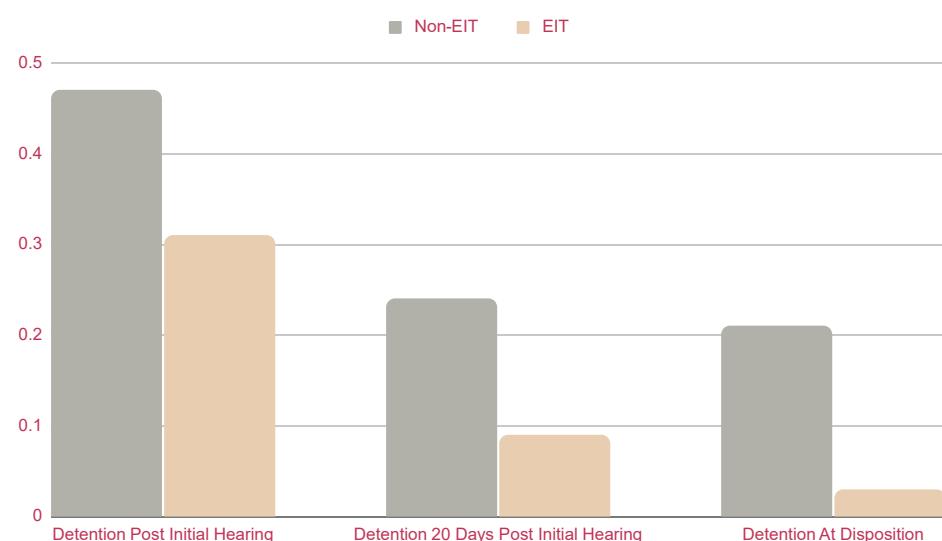
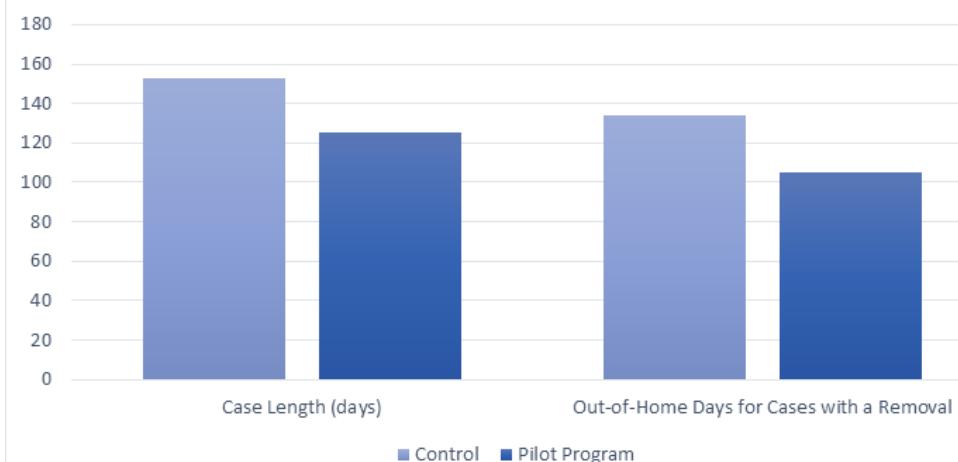
- (1) to create long-term improvements in systems that serve at-risk youth and families involved with Indiana's family/child welfare system, the juvenile delinquency system, or both, and/or
- (2) to create system improvements that proactively prevent such involvements.

System navigator pilots provide additional support to clients in CHINS, TPR, and juvenile delinquency cases.

Three pilots are currently running in Monroe, Vigo, and Washington Counties, tailored to each county's needs.

Across the Monroe and Vigo pilots, the cases in the pilot program group were closed 28 days faster (on average) and children spent 29 fewer days removed from their home.

Monroe and Vigo County System Navigator Interim Results



Marion County Early Intervention Team

The Marion County Early Intervention Team (EIT) provides a dedicated attorney with support staff prior to the initial hearing for all Juvenile Delinquency Cases.

Initial results for this project (chart to the left) show very strong results reducing detention, and promising results in other domains.

Commission Leverages Federal Funds

The Commission continues to leverage Federal Title IV-E Funds for reimbursement of county costs of legal representation for parents in child welfare cases. The funds also cover expenses associated with overhead, support staff, paralegals, investigators, peer partners, and social workers that support attorneys providing representation.

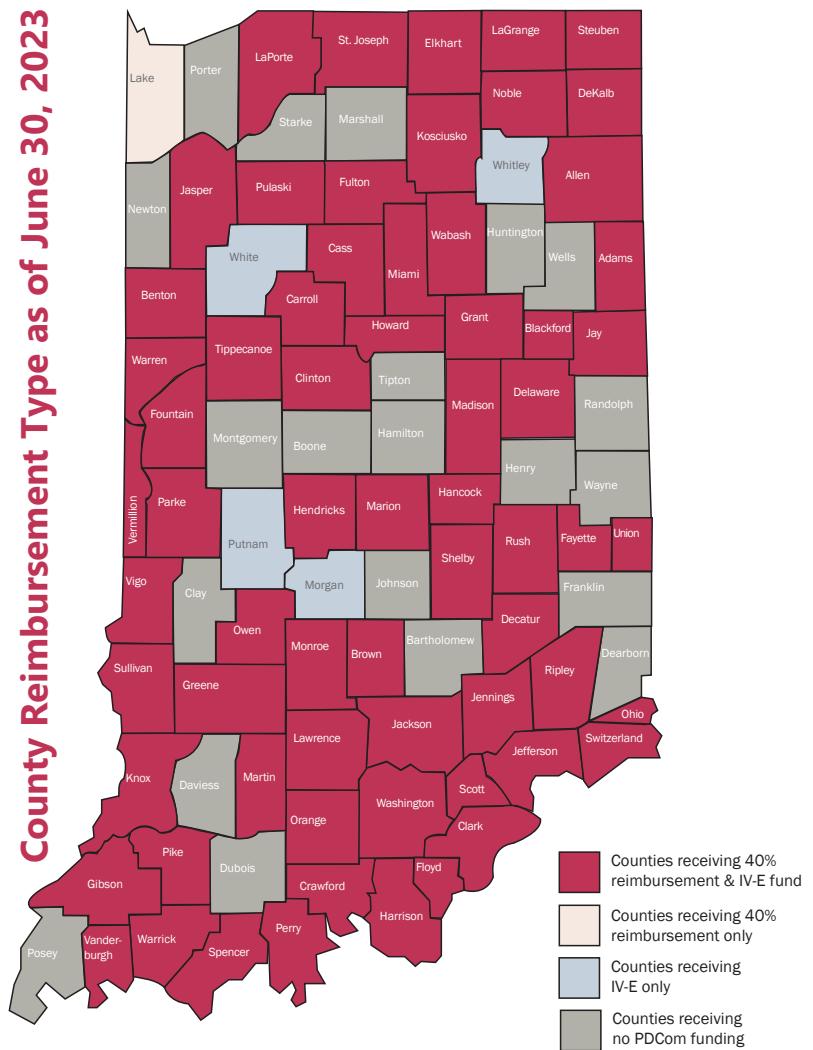
Eligible portions of the At-Risk Youth and Family Projects are also offset by the federal funds. The Commission continues to provide Title IV-E reimbursement directly to counties for DCS-related public defense expenses, regardless of whether the county receives other Commission reimbursement.

On the map to the right, the counties in pink receive a 40% reimbursement of eligible expenses, partially offset by Title IV-E dollars and additional Title IV-E dollars for the portion of eligible public defense expenses not reimbursed.

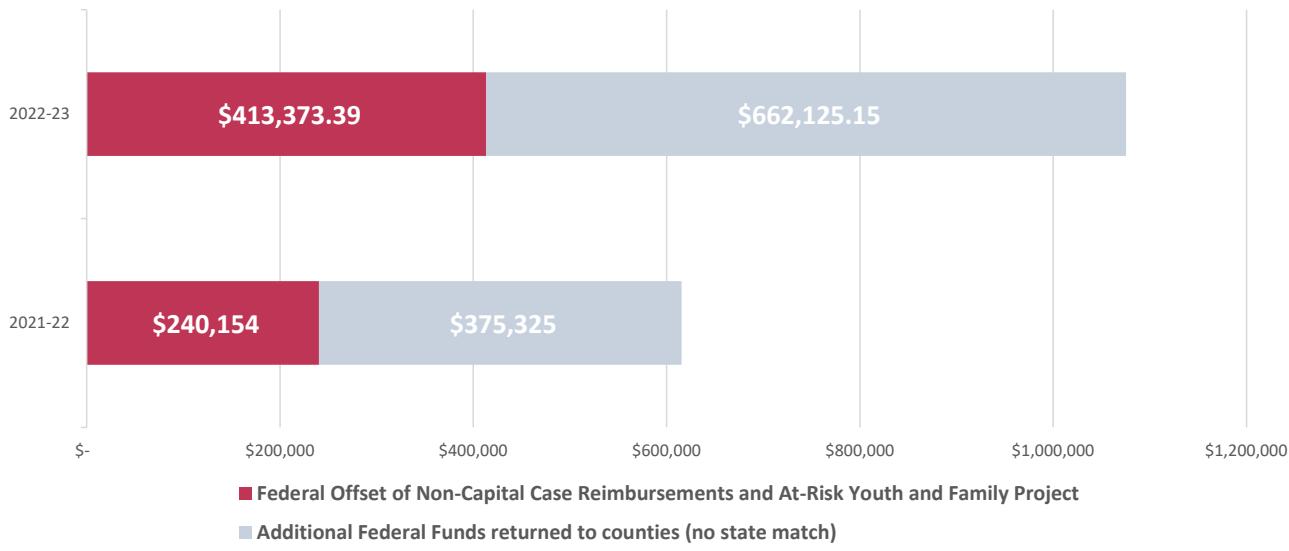
The counties in blue receive only Title IV-E reimbursement for eligible expenses.

The counties in tan only receive a 40% reimbursement of eligible expenses.

County Reimbursement Type as of June 30, 2023



Federal Title IV-E Funds Leveraged and Returned to Counties



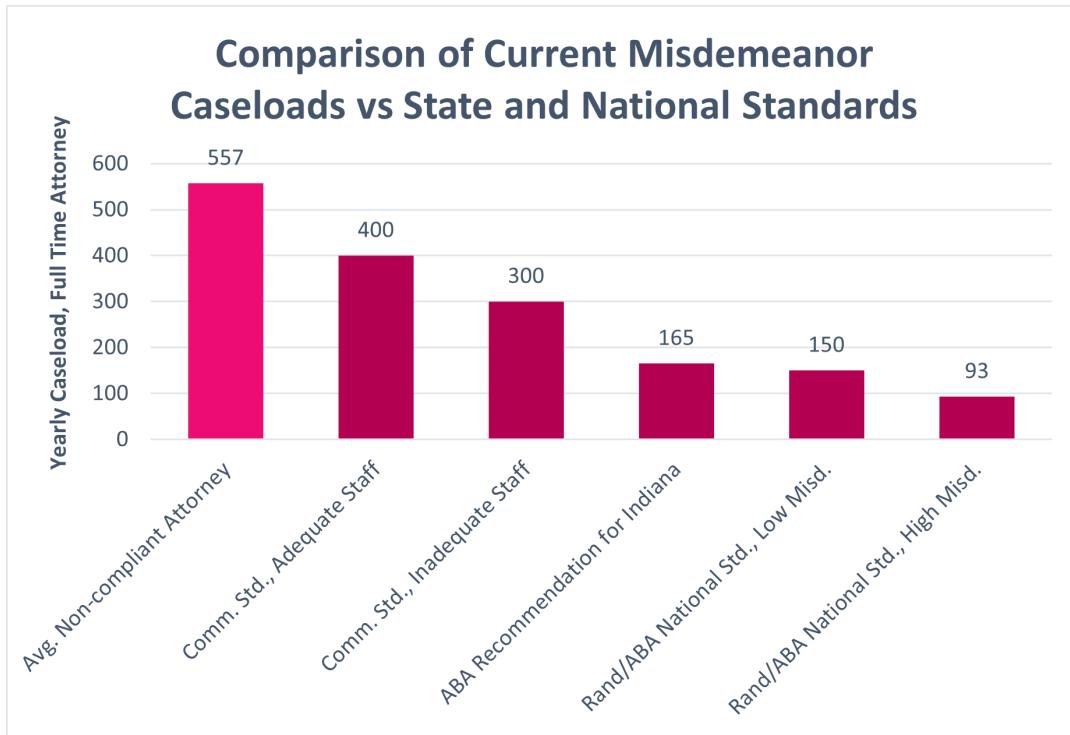
The History of Misdemeanor Reimbursement

Why do Indiana Counties receive ZERO reimbursement for misdemeanor public defense expenses?

The Commission has been in existence since 1989 but the ability to reimburse for misdemeanors was removed in 1997, primarily for fiscal reasons. That was never intended to be permanent.

- Non-reimbursement has resulted in overworked and overloaded attorneys.
- In 2023, the average misdemeanor-only attorney worked almost double the caseload they would be allowed if misdemeanor standards were enforced. However, there are several examples of attorneys working more than triple Commission standards.
- Commission standards are double national, ABA misdemeanor caseload standards.
- Current Commission standards would call for NO MORE than 300-400 cases.

More crimes than ever are classified as misdemeanors (HB 1006 - 2014).



Misdemeanor Convictions are Serious

What are the consequences of misdemeanor convictions for Hoosiers?

The consequences of a misdemeanor conviction can be significant, including loss of liberty or driving privileges. Convictions may also result in the denial of educational loans, housing, employment opportunities or professional licenses.

Other key facts about misdemeanors include:

- 65% of all adult criminal filings are misdemeanors.
- Access to counsel to explain these collateral consequences impacts plea agreement decisions by clients.
- Misdemeanor incarcerations are a leading cause of county jail overcrowding.
- Counsel was appointed in only 36% of misdemeanor cases.
- The high volume of misdemeanor cases in many courts can result in pressure for speedy dispositions and “assembly line justice.”

Non-Capital Case Reimbursement Participation Benefits

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***

* “Low recidivism risk” is a category assigned via the Indiana Risk Assessment System (IRAS) indicating that the individual is less likely than other prisoners to recidivate. Correspondingly, a greater proportion of individuals in DOC facilities are in higher recidivism risk categories in Commission Counties. ** There were 12,656 children in out-of-home care in Indiana as of July 2020. If each of these children had their time in foster care cut by 20 days, this represents \$5.8 million in cost savings. *** In 2019 the DOC admitted 8,613 prisoners, with a reported per diem of \$55.92. If the savings above were realized for each of these prisoners, this is a potential \$30.8 million in savings.

State Funding and Reimbursement History

County	Capital	Non-Capital	Total Reimbursement	Non-Capital Participation
ADAMS	\$24,093.55	\$2,147,954.02	\$2,172,047.57	2000-Present
ALLEN	\$392,175.95	\$26,123,812.92	\$26,515,988.87	2000-Present
BENTON	\$0.00	\$467,936.74	\$467,936.74	1998-Present
BLACKFORD	\$0.00	\$1,039,897.37	\$1,039,897.37	2000-Present
BOONE	\$458,377.16	\$0.00	\$458,377.16	
BROWN	\$0.00	\$570,179.01	\$570,179.01	2012-2017, 2019-Present
CARROLL	\$43,090.70	\$1,077,576.16	\$1,120,666.86	2001-Present
CASS	\$0.00	\$2,098,559.62	\$2,098,559.62	2013-Present
CLARK	\$539,030.42	\$6,959,185.93	\$7,498,216.35	1995-Present
CLINTON	\$213,065.73	\$577,749.19	\$790,814.92	2018-Present
CRAWFORD	\$0.00	\$134,692.20	\$134,692.20	2021-Present
DAVIESS	\$6,150.00	\$0.00	\$6,150.00	
DECATUR	\$0.00	\$1,477,516.18	\$1,477,516.18	1999-Present
DEKALB	\$0.00	\$1,877,551.06	\$1,877,551.06	2016-Present
DELAWARE	\$307,403.49	\$6,372,938.40	\$6,680,341.89	2011-Present
ELKHART	\$99,831.80	\$3,513,767.18	\$3,613,598.98	2020-Present
FAYETTE	\$0.00	\$2,513,524.97	\$2,513,524.97	1999-Present
FLOYD	\$404,055.07	\$5,640,745.66	\$6,044,800.73	1997-Present
FOUNTAIN* (SEE ALSO WO)	\$59,553.05	\$763,120.06	\$822,673.11	1999-Present
FULTON	\$167,001.92	\$1,612,167.13	\$1,779,169.05	1998-Present
GIBSON	\$40,865.05	\$745,256.22	\$786,121.27	2020-Present
GRANT	\$0.00	\$6,472,581.61	\$6,472,581.61	2003-Present
GREENE	\$28,435.81	\$2,922,443.26	\$2,950,879.07	2000-Present
HAMILTON	\$230,965.24	\$0.00	\$230,965.24	
HANCOCK	\$2,064.00	\$3,804,604.75	\$3,806,668.75	1999-Present
HARRISON	\$823,472.27	\$560,134.36	\$1,383,606.63	
HENDRICKS	\$0.00	\$3,400,666.84	\$3,400,666.84	2017-Present
HENRY	\$76,311.74	\$773,998.32	\$850,310.06	1999-2008
HOWARD	\$0.00	\$8,910,822.22	\$8,910,822.22	2004-Present
JACKSON	\$0.00	\$2,249,492.73	\$2,249,492.73	2015-Present
JASPER	\$47,240.91	\$1,702,389.56	\$1,749,630.47	1999-Present
JAY	\$0.00	\$2,237,342.17	\$2,237,342.17	2000-Present
JEFFERSON	\$87,054.05	\$1,578,093.77	\$1,665,147.82	2017-Present
JENNINGS	\$0.00	\$1,885,671.64	\$1,885,671.64	1999-Present
JOHNSON	\$217,557.21	\$0.00	\$217,557.21	
KNOX	\$54,275.54	\$4,516,923.02	\$4,571,198.56	1999-Present
KOSCIUSKO	\$0.00	\$3,913,021.16	\$3,913,021.16	2000-Present
LaGRANGE	\$0.00	\$980,512.69	\$980,512.69	2010-Present
LAKE	\$2,142,552.82	\$33,146,193.26	\$35,288,746.08	1999-Present
LaPORTE	\$59,311.47	\$5,611,910.47	\$5,671,221.94	1995-Present
LAWRENCE	\$0.00	\$3,548,037.80	\$3,548,037.80	2011-Present
MADISON	\$583,133.21	\$14,655,334.06	\$15,238,467.27	1998-Present

No Commission state reimbursement: Bartholomew, Clay, Dearborn, Dubois, Franklin, Huntington, Marhsall, Newton, Starke, Tipton, Wells

County	Capital	Non-Capital	Total Reimbursement	Non-Capital Participation
MARION	\$4,202,443.59	\$130,121,810.19	\$134,324,253.78	1995-Present
MARTIN	\$0.00	\$1,027,518.72	\$1,027,518.72	1999-Present
MIAMI	\$17,918.79	\$1,958,440.59	\$1,976,359.38	1995-2007,2018-Present
MONROE	\$0.00	\$12,146,166.62	\$12,146,166.62	2000-Present
MONTGOMERY	\$0.00	\$1,080,445.33	\$1,080,445.33	1995-2013
MORGAN	\$511,283.37	\$0.00	\$511,283.37	
NOBLE	\$0.00	\$4,014,707.13	\$4,014,707.13	2001-Present
OHIO	\$0.00	\$512,326.82	\$512,326.82	1999-Present
ORANGE	\$0.00	\$2,180,679.31	\$2,180,679.31	1995-Present
OWEN	\$0.00	\$822,861.77	\$822,861.77	2015-Present
PARKE * (SEE ALSO WCIPDO)	\$405,587.58	\$967,650.43	\$1,373,238.01	1996-Present
PERRY	\$0.00	\$1,507,441.11	\$1,507,441.11	2004-Present
PIKE	\$16,890.76	\$1,365,403.45	\$1,382,294.21	2001-Present
PORTER	\$83,653.84	\$0.00	\$83,653.84	
POSEY	\$75,447.10	\$0.00	\$75,447.10	
PULASKI	\$0.00	\$1,582,424.47	\$1,582,424.47	1999-Present
PUTNAM	\$128,306.40	\$0.00	\$128,306.40	
RANDOLPH	\$25,308.56	\$0.00	\$25,308.56	
RIPLEY	\$0.00	\$761,505.84	\$761,505.84	2014-Present
RUSH	\$0.00	\$1,839,647.60	\$1,839,647.60	2001-Present
ST. JOSEPH	\$85,691.69	\$12,446,493.06	\$12,532,184.75	2007-Present
SCOTT	\$0.00	\$1,510,848.68	\$1,510,848.68	2000-2009,2018-Present
SHELBY	\$40,347.59	\$3,370,226.63	\$3,410,574.22	1999-Present
SPENCER	\$348,321.01	\$1,433,044.68	\$1,781,365.69	1999-Present
STEUBEN	\$117,935.92	\$2,140,621.27	\$2,258,557.19	2001-Present
SULLIVAN	\$70,575.60	\$1,044,046.00	\$1,114,621.60	1999-Present
SWITZERLAND	\$0.00	\$1,276,248.14	\$1,276,248.14	1999-Present
TIPPECANOE	\$85,663.35	\$15,030,452.60	\$15,116,115.95	2004-Present
UNION	\$0.00	\$458,750.15	\$458,750.15	1999-Present
VANDERBURGH	\$852,201.82	\$18,073,497.50	\$18,925,699.32	2000-Present
VERMILLION * (SEE ALSO WCIPDO)	\$0.00	\$1,152,355.89	\$1,152,355.89	1997-Present
VIGO	\$153,767.89	\$13,861,474.42	\$14,015,242.31	1999-Present
WABASH	\$0.00	\$1,678,838.36	\$1,678,838.36	2007-Present
WARREN	\$0.00	\$315,323.62	\$315,323.62	1996-Present
WARRICK	\$481,596.53	\$532,429.06	\$1,014,025.59	
WASHINGTON	\$3,877.66	\$3,286,373.08	\$3,290,250.74	2000-Present
Wayne	\$3,363.90	\$0.00	\$3,363.90	
WCIPDO - FOUNTAIN, PARKE, VERMILLION*	\$0.00	\$138,513.37	\$138,513.37	2022-Present
WHITE	\$0.00	\$32,777.70	\$32,777.70	2001-2002
WHITLEY	\$0.00	\$213,243.89	\$213,243.89	1999-2008

Indiana's Lawyer Shortage Worsens

Indiana is experiencing a significant lawyer shortage that is impacting the effective functioning of Indiana's criminal justice system. The shortage is most prevalent in rural Indiana.

The Commission has produced a comprehensive article addressing the issue, available on our website (www.in.gov/pdcom).

Key take-aways include:

- Indiana only has about one-third of the number of lawyers it needs.
- While pay for public defenders in Commission counties have increased in recent years (from a median pay of \$67,750 in 2020, to \$69,896 in 2021, \$74,338 in 2022, and \$77,304 in 2023), pay still falls well below comparable pay in the private sector. In 2022, the median pay for Indiana lawyers was \$104,562, and the average was \$142,599.
- After the recent closure of the Valparaiso Law School, there are three remaining law schools in Indiana—IU-Maurer (Bloomington), IU-McKinney (Indianapolis), and Notre Dame. Many graduates (as many as 94% for one school) leave the state, and less than a third of students graduating from these schools enter public interest law.

Potential Solutions include:

- More competitive compensation
- Student loan assistance in exchange for public service
- Creating public service legal fellowships
- Addressing rules of bar admission, ABA Accreditation

2023 Capital Case Reimbursements

COUNTY	DEFENDANT	TOTAL
Clinton	Ferrell	\$ 156,866.63
Madison	Boards	\$ 23,239.80
Marion	Dorsey	\$ 13,294.50
Wayne	Lee	\$ 3,363.90
Total		\$ 196,764.83

Funding and Reimbursement History

Fiscal Year	# of Counties Eligible for Reimbursement	Reimbursement Paid in Capital Cases	Reimbursement Paid in Non-Capital Cases	Total Reimbursement Paid
1989-90				\$ -
1990-91		\$ 58,550		\$ 58,550
1991-92		\$ 286,805		\$ 286,805
1992-93		\$ 484,501		\$ 484,501
1993-94		\$ 337,139		\$ 337,139
1994-95		\$ 288,465		\$ 288,465
1995-96	5	\$ 528,641	\$ 668,747	\$ 1,197,388
1996-97	7	\$ 371,046	\$ 628,841	\$ 999,887
1997-98	9	\$ 799,450	\$ 1,022,104	\$ 1,821,554
1998-99	17	\$ 526,515	\$ 2,188,701	\$ 2,715,216
1999-00	30	\$ 378,209	\$ 2,990,954	\$ 3,369,163
2000-01	38	\$ 712,054	\$ 3,669,319	\$ 4,381,373
2001-02	50	\$ 473,317	\$ 4,869,313	\$ 5,342,630
2002-03	50	\$ 413,805	\$ 5,371,364	\$ 5,785,169
2003-04	52	\$ 478,222	\$ 4,553,537	\$ 5,031,759
2004-05	53	\$ 672,381	\$ 11,026,803	\$ 11,699,184
2005-06	53	\$ 386,288	\$ 5,824,921	\$ 6,211,209
2006-07	54	\$ 844,769	\$ 12,147,454	\$ 12,992,223
2007-08	53	\$ 753,772	\$ 14,162,897	\$ 14,916,669
2008-09	48	\$ 742,251	\$ 14,325,105	\$ 15,067,356
2009-10	50	\$ 618,252	\$ 15,373,384	\$ 15,991,636
2010-11	52	\$ 370,709	\$ 15,996,714	\$ 16,367,423
2011-12	53	\$ 532,706	\$ 16,685,482	\$ 17,218,188
2012-13	53	\$ 381,459	\$ 17,546,818	\$ 17,928,277
2013-14	54	\$ 421,935	\$ 18,693,834	\$ 19,115,769
2014-15	55	\$ 268,182	\$ 19,923,237	\$ 20,191,419
2015-16	57	\$ 590,939	\$ 20,695,801	\$ 21,286,740
2016-17	58	\$ 896,287	\$ 22,435,660	\$ 23,331,946
2017-18	62	\$ 256,896	\$ 25,006,493	\$ 25,263,389
2018-19	62	\$ 481,104	\$ 27,502,636	\$ 27,983,740
2019-20	63	\$ 188,155	\$ 28,877,630	\$ 29,065,785
2020-21	65	\$ 6,138	\$ 29,888,538	\$ 29,894,676
2021-22	67	\$ 71,547	\$ 31,415,919	\$ 31,487,466
2022-23	67	\$ 196,765	\$ 34,976,783	\$ 35,173,548
TOTALS		\$ 14,817,254	\$ 408,468,990	\$ 423,286,244

2022-2023 Non-Capital Reimbursements

