



# Indiana Task Force on Public Defense Stakeholder Survey

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## Executive Summary

### Background

The Indiana Task Force on Public Defense (Task Force) utilized a Stakeholder Survey as one of several methods to gather information about the provision of services by public defenders and other court-appointed attorneys across the state.

The 34-question survey was designed to obtain various perspectives related to public defense in misdemeanor, felony, juvenile delinquency, Children in Need of Services (CHINS) and Termination of Parental Rights (TPR) cases. Emphasis was placed on learning what is working, what needs improvement, and suggestions to remedy identified challenges. Thus, many questions were open-ended, resulting in a plethora of comments.

The survey was disseminated to prosecutors, public defenders, judges, magistrates, court personnel, law enforcement, court-appointed attorneys, corrections officers, elected officials, and other allied professionals.<sup>1</sup> The instrument remained open for response between February 20, 2018 and March 31, 2018.

The Executive Summary is a brief overview of the data collected.<sup>2</sup>

### Participating Stakeholders

Three hundred and thirty-eight (338) stakeholders completed the entire survey, with an additional 102 individuals answering some portion of the questions. There was at least one survey response from a stakeholder in each of Indiana's 92 counties, with Allen, Lake, Marion, Tippecanoe, Vanderburgh and Vigo counties having the largest number of respondents.

Of the 440 respondents, 205 are attorneys, 101 judges or magistrates (judiciary), and 48 work as corrections officers, parole/probation or law enforcement. The additional 86 respondents comprised various stakeholder groups.

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<sup>1</sup> To ensure the survey was widely disseminated, Task Force members and Indiana Public Defender Commission staff and contractors reached out to stakeholder membership organizations, posted links to the survey on listservs, made announcements at local listening sessions, and sent the survey to emails obtained by researching county websites.

<sup>2</sup> Survey respondents were assured that only non-identifiable information would be shared with the Task Force. To that end, this summary includes aggregate data, themes, and a few comments that support those themes. The text boxes contain direct quotes from survey responders without attributions.

The judiciary who participated in the survey, presided over the following type of cases:

- 69.23% Felony
- 51.92% Misdemeanor
- 30.77% Delinquency
- 24.04% CHINS
- 19.23% TPR

The attorney respondents indicated they served in these roles:

- 13% Prosecutors
- 31% Full-Time PDs
- 37% Part-Time PDs (contract or case-by-case assignment)
- 12% Private Practice
- 7% Court-Appointed, GALs, or Other

### Overarching Themes<sup>3</sup>

There is recognition that indigent defense is critical. There is also an acknowledgement that the entire system is overwhelmed and under-resourced. Despite that fact, every day judges are demonstrating their commitment to the 6<sup>th</sup> Amendment by appointing attorneys in felony cases and dedicated attorneys are fiercely working to represent their clients. The system is filled with people suffering from addiction and mental health issues. The shortage of help and treatment for these individuals is significant and must be addressed.

Some stakeholders pointed to signs of hope in enhanced system collaboration and the development of the Indiana Public Defender Commission's (IPDC) standards, especially pertaining to caps on felony caseloads and mandatory training. Strides have been made in pre-trial release, but challenges remain.

Stakeholders noted that those working in indigent defense are caring and committed but faced obstacles such as high caseloads and access to limited resources. This can be an impediment to attracting and retaining competent attorneys. Frustrations were shared surrounding the lack of time to properly handle cases and the unavailability of support and litigation services.

A majority indicated that they believed representation is inconsistent across the state, pointing to disparity of resources and different mechanisms of delivering indigent defense as the cause. Inconsistencies were also noted in procedures and processes across courts and counties.

There is general support for parity of resources so that judges, public defenders, and prosecutors can each fulfill their respective roles. Many suggested the continued development and refinement of standards for public defenders, including adding requirements about misdemeanor caseloads, outlining expectations around client communications, and creating standards for CHINS/TPR cases. While some thought IPDC's

*I am part of the Board of Directors of the Indiana Public Defender Council. I think our attorneys are moving mountains with the little resources they frequently have across the State. You have a wealth of dedicated attorneys who are truly fighting in a system that is often stacked against them.*

*~Full-Time PD*

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<sup>3</sup> Many of the themes are interrelated.

standards created barriers to securing indigent defense,<sup>4</sup> almost everyone recognized their role in ensuring quality and consistent representation.

CHINS/TPR was frequently described as having the most extensive problems at all levels. Some issues named include: unrepresented parents and children; professionals working in the system lacking proper training and knowledge; and the absence of resources for families. There seems to be mistrust of the state's restructured system for legal representation in the child welfare system, which may be contributing to concern about any potential state-driven changes in indigent defense.

Other recommendations included specialization for appeals, and requiring local public defender councils/boards to have members who understand indigent defense.

Elected officials and the judiciary discussed fiscal pressures of deficient budgets and the scarcity of funding opportunities. There is a desire by stakeholders to remedy the situation and seek more uniformity in indigent services and resource allocation. Those using full-time public defender offices and following IPDC's standards think that format is the best option. Others asked for flexibility in the implementation of any state measure, to allow for local variances. Points of contention remain about whether local or state control works best, especially in urban versus rural counties. Some stakeholders have apprehension about a one-size-fits-all mandate and the unintended consequences in counties which are already effectively operating given their own culture, needs, and resources. Some have suggested a phase-in process or different type of structure for those areas.

The remainder of this document highlights statistics and comments corresponding to the above referenced themes.

### Appointment of Indigent Defense

- 91.64% strongly agree/agree that the state has the responsibility to ensure the right to counsel in every county in Indiana.
- 88.28% strongly agree/agree that judges should appoint counsel to represent those that are indigent.
- 79.40% strongly agree/agree that the appointment of legal representation should be uniform across the state.
- 73.27% of courts responding to the survey use attorneys that are not full-time public defenders.

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<sup>4</sup> Barriers identified include the inability to find attorneys who can either meet the standards or who will accept the rate of pay with that type of expertise.

The survey explored how attorneys are being placed on court appointment lists. In addition to be in good standing with the bar, 52.11% judges use IPDC standards and 33.80% use the track record of the attorney for handling similar cases.

The judiciary wants to be involved in establishing appointment selection criteria, evaluating attorney performance, and placing individuals on the court appointment list. Judicial respondents were divided on whether to be involved in setting pay rates (42.25% involved/46.48% not involved) and assigning individual attorneys to cases (53.52% involved/45.07% not involved). Attorneys, disagreed with judges setting pay rates and assigning cases to specific attorneys. Attorney respondents were not in agreement about whether judges should place attorneys on appointment lists (42.78% involved/49.40% not involved) and evaluate attorney performance (49.20% involved/32.09% not involved).

The judiciary indicated that one of their greatest difficulties with court appointments is having an insufficient number of attorneys to whom to assign cases. A large number of conflicts, recruiting attorneys that can meet IPDC standards, and finding attorneys willing to take cases at the allocated rate of pay were some of the reasons offered for this deficiency. Other identified challenges included shortage of funding and exhaustive caseloads.

While kudos were given to the court and judges for appointing counsel, requests came from all stakeholder groups about giving guidance on the process of appointing counsel to ensure consistency across the state. This includes determining indigency as well as the assignment of cases.

*The Judge and our Bar take the responsibility of representing indigent clients very seriously and with the utmost care and respect. However, the County does not have enough resources to pay pauper attorneys adequately - thus it is getting harder to get attorneys to take on such. ~ Elected Official*

*There needs to be a better approach to helping the courts determine who qualifies for appointed counsel (at public expense) and who can reasonably retain their own attorney. ~ Judiciary*

*In my county, most defendants are getting Public Defenders assigned rather quickly and easily. Most public defenders in our county are well qualified to handle the cases they are assigned. ~ Full-Time PD*

*Nepotism is a huge problem in the local public defender system. ~ Prosecutor*

*Attorneys are being appointed but at the same time, there are budget constraints that do not allow them to be adequately reimbursed for their services. ~ Full-Time PD*

*There are differences between counties where the judges control appointments and counties that have a Chief Public Defender. I believe that more standardization (possibly adoption of the Missouri system) would benefit Indiana greatly. ~ Attorney, Private Practice*

## Overwhelmed System & Resource Equity

- 76.34% strongly agree/agree that there is pressure on courts to move through cases quickly due to resources/time constraints.
- 89.91% strongly agree/agree prosecutors and public defenders should have the same level of resources available to carry out their respective roles and responsibilities.
- Less than half of attorney respondents felt that have sufficient resources to do their job to the level they aspire. Although, more than half indicated they do have access to needed technology.

Collectively, the entire system is distressed and resource deficient. Stakeholders point to the dearth of resources for those dealing with mental health and substance abuse issues.

Lack of funding impacts all aspects of the criminal justice, civil, and juvenile justice systems. For example, it contributes to burnout and a lag in case processing

*I represent parents in CHINS/TPR cases. My caseload is ridiculously high. I do not have trained paralegals. I have no access to investigators. My caseload is so large that I barely provide a minimum level of representation.*  
~ Full-Time PD

*Absolute equality of resources between defense and prosecution.* ~ Attorney, Private Practice

*[Challenges] Court congestion, jail overcrowding, fines & fees / poverty, understaffing (prosecutors, PDs, DCS case workers & attorneys).* ~ Prosecutor

*Remove funding for experts and investigatory needs from judicial control.* ~ Full-Time PD

*[Challenge] Funds to PD support (i.e., staff, investigation, depositions, interpreters, etc.).* ~ Elected Official

*Lack of resources, particularly for mental health clients and clients with substance abuse issues.* ~ Part-Time PD

*At a minimum, there should be regional PD offices that can provide clerical, investigative, research, and training/mentoring support to all PDs in the state.*  
~ Part-Time PD

*[Challenge] Time per case, there's never enough. But it's a balancing act because more time is expensive. More time equals more judges, more staff, more courtrooms which equals more tax money for this which is less for other things.* ~ Judiciary

There is general support for parity of resources so that judges, public defenders, and prosecutors can each fulfill their respective roles. Public defenders do not have the resources to support their work, such as investigators, paralegals, interpreters, and experts. Attorneys wanted more control over funding decisions about litigation resources versus seeking court approval.

Throughout the survey, stakeholder comments discussed enormous caseloads, yet in a question specific to attorneys, only 25% of responding attorneys indicated that their caseloads were too large. In the general opinion section, 59.38% of all stakeholders strongly disagree/disagree that public defender caseloads are manageable, although prosecutors differed in this response, with 63.16% rating caseloads as manageable.

## Standards

- 75.30% strongly agree/agree that the state should impose mandatory standards for indigent defense services statewide.
- 62.92% indicated that IPDC should have the authority for this mandate. 68.42% of prosecutors strongly disagreed/disagreed with IPDC having that authority. The judiciary was almost split in their opinion.

Stakeholder comments confirmed that standards assist in improving public defender performance, specifically mentioning mandates around felony caseloads and training. Sentiments were expressed about also creating requirements relevant to attorney-client communication. Many noted that attorneys are not speaking with their clients until moments before hearings or communication with clients is unresponsive. Others asked that IPDC create caseload standards applicable to misdemeanors and develop guidance on handling CHINS/TPR cases. There were also some concerns that standards make it more difficult for counties to find attorneys that 1) can meet the standards or 2) are willing to work at that level of compensation outlined by the state. Others noted the difficulty in balancing private practices and court appointment cases, though some thought the ability to be able to do both was essential to having attorneys willing to take indigent cases. Overall, stakeholders indicated uniformity in performance expectations is beneficial.

*The caseload limits and required training/experience standards are absolutely critical to our system of public defense. ~Full-Time PD*

*Make the Chief Public Defender position the only position that individual is permitted to have. ~ Judiciary*

*Far too often Public Defenders do not meet with their clients until the day of the hearing. There should be a standard that requires Public Defenders to make initial contact with clients within 10 days of being appointed. ~ Corrections*

*Reduce misdemeanor caseloads. I receive 40-60 new cases each month and I am the only misdemeanor public defender in my county. ~ Full-Time PD*

*There should be uniformity throughout the entire system. Public defenders should be full-time attorneys and provided the tools and training to effectively represent their clients. ~ Attorney, Private Practice*

*[Challenge] Access to attorneys in the county who meet the criteria from the State Public Defenders Commission, for a mere \$90/hour. ~ Judiciary*

## Quality & Competency of Public Defense

- 95.84% strongly agree/agree the quality of legal representation received should not be dependent upon where you live in Indiana.
- 99.70% strongly agree/agree that appointed attorneys should have the skills and training needed to ensure competent representation.
- 73.80% rate representation received through the public defense system as average or above average.
- 50.89% believe the quality of court-appointment is not consistent across the state. 46.43% were unsure.
- 73.82% of participating attorneys have been practicing for at least 10 years.
- 36.65% of attorneys said they were “very confident” in their knowledge and skills and 56.02% indicated they were confident.

Most respondents indicated that those serving as public defenders were caring and committed but faced various challenges affecting the delivery of quality legal services. There is acknowledgement that 92 counties will never entirely be the same. However, a majority indicated that representation is in fact inconsistent across the state, although there appears to be more consistency in counties participating in the state reimbursement program. Large caseloads impact quality even for the most experienced attorneys.

A general sentiment was expressed that indigent defense is better in urban areas due to disparity in resources in rural communities, including funding levels and the pool of available attorneys.

*The quality of public defenders varies obviously in different counties depending on how attorneys are paid, appointed and screened for their posts.*

*~ Probation/Parole*

*In our county, many of the public defenders are the most experienced attorneys in the county. ~ Part-Time PD*

*The defense a person may or may not receive in a rural county, is not the same as what they might receive in a more urban county, simply due to access to qualified attorneys in rural areas. ~ Elected Official*

*The caseloads in some larger counties is substantially too high and affects the amount of time that a public defender can spend on cases. ~ Attorney, Private Practice*

*Money matters and the smaller counties do not have sufficient funding to hire good attorneys. ~ Part-Time PD*

*The PDs that I know work very hard at their job despite the lack of equal resources and appreciation from clients and others. ~ Attorney, Court-Appointed*

*[Suggestion] Specialization. I am all over the place. I may be doing chins or delinquency on minute and major felony the next. ~ Full-Time PD*

## CHINS, TPR & Delinquency

- 97.70% strongly agree/agree that representing youth in juvenile court requires specific expertise in youth law, juvenile court, and youth development.
- 92.49% strongly agree/agree that in TPR cases, parents who cannot afford an attorney should have one appointed at no cost.
- 71.66% strongly agree/agree that children should have attorneys in CHINS/TPR cases.

Concerns about CHINS and TPR were echoed throughout survey responses. Stakeholders support parents receiving attorneys in these cases, urging for appointment at the outset. In fact, courts appointing counsel at early stages held out their efforts as successes.

Stakeholders working in these systems indicated specialized knowledge is required for juvenile court, including understanding youth development and trauma. High caseloads and nonexistent resources for families and stakeholders were mentioned as barriers. There were also numerous comments referring to changes in the structure of DCS legal representation and dissatisfaction with those changes.

## Local Public Defender Boards

- 63.37% of participating members of the judiciary have a public defender board in their county.
- Of those with local boards, 36.51% indicated they were highly effective, 47.62% middle of the road, and 15.87% rated them as ineffective.

Through comments, many respondents attributed effectiveness in their board's oversight and management to: buy-in and communication across the entire system; inclusion of board members that have expertise in indigent defense; and moving to a full-time public defender's position or office. Reasons given for ineffectiveness included: the voluntary nature of the board; resistance from county council to pay for public defense; board members lacking expertise in the law or indigent defense; high public defender caseloads; no one designated in charge; and apprehension over upsetting the status quo and long-standing relationships.

*Mandated attorneys for children and parents at the time of the first hearing in all CHINS cases. ~ Public Policy Professional*

*I'm a CHINS pd. I currently have over 160 clients. I am in court every day and have little time to do the necessary legal work clients need and deserve. People in desperate need end up being just a number.  
~ Full-Time PD*

*I think the Court system is hampered by an ineffective CPS system. ~ Elected Official*

*Most attorneys who work in chins and tpr cases have very little knowledge and understanding of the chins laws.  
~CASA/GAL*

*All children should be presumed indigent and appointed counsel at the earliest point in their case. ~ Full-Time PD*



## Pre-Trial Release

- 67.07% strongly agree/agree that too many people languish in jails because they do not have the money to make bail. However, 85% prosecutors strongly disagree/disagree with this statement.
- 81.05% strongly agree/agree that a strong public defender system may reduce jail overcrowding, but 65% of prosecutors strongly disagree/disagree with this statement.
- Survey respondents were asked to rate the effectiveness of Indiana's pre-trial system for assessing defendants' risk for: nonappearance; committing a new offense; and self-harm. There was no consensus on these items with ratings being divided across the continuum of ineffective to effective. Many indicated that they did not know the effectiveness and nothing was rated highly effective.

*The new pretrial system basing decisions on risk level vs. monetary amounts appears to be a step in the right direction. Not all parties involved interpreting statute regarding pretrial home detention credit time the same way. ~ Corrections*

*I believe pre-trial confinement for misdemeanors creates complications for the attorneys and the clients and is generally unnecessary. ~ Attorney, Private Practice*

*[Challenge] Pretrial detention because can't afford to pay a bond is the biggest injustice most of my clients face. ~ Full-Time PD*

*I believe the courts are making an attempt to diminish the amount of time that an indigent person remains in jail, the problem still becomes one of financial resources. The court often make use of the ankle bracelet (ICU Services), but clients cannot afford the alternative. ~ Part-Time PD*

*Defendants who are not flight risks or security risks spend far too much time in jail because they cannot post bail. ~ Probation/Parole*

Changes in considerations for pretrial release are helping. However, stakeholders mentioned the lack of uniformity in its use and application. Survey comments indicated that people continue to be incarcerated because they cannot afford bonds and some clients are making decisions on their cases to reduce time spent in jail awaiting trial. Additionally, people still cannot afford some of the alternatives to incarceration, such as electronic monitoring.

## State vs. Local Control

Points of contention remain about whether local or state control is the best approach. Throughout the survey, stakeholders voiced the need for improvements in the system for delivering public defense, including increasing available resources and pay. The latter being imperative.

Elected officials and judges are tired of fiscal crises and want solutions to pay for critical indigent legal services. Stakeholders from counties that have full-time public defenders or are currently involved in the state reimbursement system, voiced support for that becoming the standard across the state. Those stakeholders also urged for additional funding and asked that no unfunded mandates be created.

Many stakeholders advocated for flexibility in the implementation of state requirements to allow for differences across counties. Several stakeholders talked about the historical “home rule” way of doing business in Indiana, with a desire to keep that the norm.

*The balance between local engagement and state standards leans too heavily to local engagement. This means that practice and interpretation varies greatly between counties -- especially with regard to treatment of non-represented parties. ~ Elected Official*

*State-paid Chief and Chief Deputy Public Defenders would be a huge help as well. This would take some of the financial pressure of counties and also take some public defender funding out of the politicized county budgeting process. ~ Judiciary*

*Adopt a state-wide public defenders office with an office in each county. ~ Probation/Parole*

*Allowing each county to tailor its public defender process to the specific needs of each county is working well. ~ Part-Time PD*

*There should be a State Public Defender Office with the same resources as the Prosecutor's. Local Courts should not be in the business of overseeing the public defenders, other than having the ability to observe and comment on their performance, particularly when it is below what should be expected. ~ Judiciary*

*Whatever system is implemented as a result of this study and efforts it cannot be a one-size fits all system. My two-court rural county and Marion county cannot operate under the same system optimally or in a cost effective manner. ~ Judiciary*

*All counties should have independent public defenders - no more contracting directly with judges. Standards should be uniform across the state. ~ Part-Time PD*

*DO NOT MOVE TO MANDATORY FULL-TIME PUBLIC DEFENDERS STATEWIDE. Attorneys should be able to hang out their shingle and develop a private practice while handling public defender cases part-time. Don't turn public defense work into a dead-end job like DCS attorneys. ~ Attorney, Private Practice*

*I strongly agree with the constitutional right to counsel for the indigent in these cases. However, if the State is going to mandate the criteria and process of appointing and determining public defenders, then the State should assume the financial public defenders. ~ Judiciary*

## Appellate Counsel

In responding to a question about the greatest challenges in Indiana, some survey respondents named access to appellate counsel. In the survey, judges, magistrates and court personnel were specifically asked to share recommendations for increasing the effectiveness of appellate counsel.

*The skills for trial attorneys and appellate attorneys are different.*

*~ Judiciary*

Those who did have recommendations listed the following:

- Improve communication between trial and appellate counsel, including the formation of standards.
- Create more opportunities for training on how to handle appeals.
- Designate attorneys to be appellate counsel, rather than sharing appeals among all public defenders.
- Consider specialization.