

**1993**  
**PROPOSED**  
**PUBLIC DEFENDER**  
**LEGISLATION**

*EXHIBIT A .*  
*to Board Minutes from 8-27-92*

1 Chapter 13. Public Defender Commission

3 33-9-13-1 Establishment; members  
4

5 Sec. 1. The Indiana public defender commission (referred to in this article  
6 as the commission) is established. The commission is composed of the following  
7 seven (7) members, none of whom may be a judge, a law enforcement officer, or a  
8 court employee:  
9

10 (1) Three (3) members appointed by the governor, with no more than  
11 two (2) of these individuals belonging to the same political party.  
12

13 (2) Three (3) members appointed by the chief justice of the supreme  
14 court, with no more than two (2) of these individuals belonging to the  
15 same political party.  
16

17 (3) One (1) member appointed by the board of trustees of the Indiana  
18 criminal justice institute, who is an attorney admitted to practice law  
19 in Indiana.  
20

21  
22 33-9-13-2 Chairman; terms; compensation; meetings  
23

24 Sec. 2. (a) The members of the commission shall designate one (1) member  
25 of the commission as chairman.  
26

27 (b) The term of office of each member of the commission is four (4) years. A  
28 vacancy occurring among the members of the commission before the expiration of a term  
29 shall be filled in the same manner as the original appointments. An appointment to fill a  
30 vacancy occurring before the expiration of a term is for the remainder of the unexpired term.  
31

32 (c) Each member of the commission who is a state employee is entitled to  
33 reimbursement for traveling expenses and other expenses actually incurred in  
34 connection with the member's duties, as provided in the state travel policies and  
35 procedures established by the department of administration and approved by the  
36 budget agency.  
37

38 (d) A member of the commission who is not a state employee is entitled to  
39 the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is,  
40 however, entitled to reimbursement for traveling expenses and other expenses actually  
41 incurred in connection with the member's duties, as provided in the state travel  
42 policies and procedures established by the department of administration and approved  
43 by the budget agency.  
44

45 (e) The members of the commission shall meet at least quarterly and at times  
called by the chairman or at the request of three (3) commission members.

1  
33-9-13-3 Duties

4 Sec. 3. (a) The commission shall do the following:

5  
6 (1) (a) Make recommendations to the Supreme Court of Indiana  
7 concerning standards for indigent defense services provided for  
8 defendants against whom the state has sought the death sentence under  
9 IC 35-50-2-9, including the following:

10  
11 (A) (1) Determining indigency and eligibility for legal  
12 representation.

13  
14 (B) (2) Selection and qualifications of attorneys to  
15 represent indigent defendants at public expense.

16  
17 (C) (3) Determining conflicts of interest.

18  
19 (D) (4) Investigative, clerical, and other support  
20 services necessary to provide adequate legal represen-  
21 tation.

22  
23 (2) (b) Adopt guidelines and salary and fee schedules under which the  
24 counties will be eligible for reimbursement under IC 33-9-14.

25  
26 (3) (c) ~~Make recommendations to the trial courts concerning~~ Adopt  
27 standards for indigent defense services, including the following:

28  
29 (A) (1) Determining indigency and the eligibility for  
30 legal representation. ~~Adopted and included to~~

31  
32 (B) (2) The issuance and enforcement of orders  
33 requiring the defendant to pay for the costs of court  
34 appointed legal representation under IC 33-9-11.5.

35  
36 (C) (3) The use and expenditure of funds in the county  
37 supplemental public defender services fund established  
38 by IC 33-9-11.5.

39  
40 (4) ~~Selection and~~ qualifications of attorneys to repre-  
41 sent indigent defendants at public expense.

42  
43 (5) Compensation rates for salaried, contractual and assigned counsel.

44  
45 (6) Conflicts of interest.  
46

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

(7) Investigative, clerical, and other support services necessary to provide adequate legal representation.

(8) Minimum and maximum caseloads of public defender offices and contract attorneys.

(9) The operation of county public defender offices.

(10) The awarding of contracts under IC 33-9-10.

(4) (d) Make recommendations concerning the delivery of indigency defense services in Indiana.

(5) (c) Make an annual report to the governor, the general assembly, and the supreme court on the operation of the public defense fund

(f) Review the comprehensive plans for providing defense services submitted by county public defender boards under IC 33-9-14-2 and determine ninety (90) days before the effective date of the plan whether the plan complies with the standards and guidelines established by the commission to entitle the county to state funding under IC 33-9-14-13.

#### 33-9-13-4 Staff support

Sec. 4. The division of state court administration of the supreme court of Indiana shall provide general staff support to the commission. The division of state court administration may enter into contracts for any additional staff support that the division determines is necessary to implement this section.

1 Chapter 14. Public Defense Fund

3  
4  
5 33-9-14-1 Establishment; administration  
6

7 Sec. 1. The public defense fund is established to receive court costs or other  
8 revenues for county reimbursement and administrative expenses. The fund shall be  
9 administered by the division of state court administration of the supreme court of  
10 Indiana.  
11

12  
13 33-9-14-2 Investments  
14

15 Sec. 2. The treasurer of state shall invest the money in the fund not currently  
16 needed to meet the obligations of the fund in the same manner as other public funds  
17 may be invested.  
18

19  
20 33-9-14-3 Money not reverting to state general fund  
21

22 Sec. 3. Money in the fund at the end of a fiscal year does not revert to the  
23 state general fund.  
24

25  
26 33-9-14-4 Request for reimbursement for indigent defense services  
27

28 Sec. 4. (a) A county auditor shall submit a written request to the commission  
29 for reimbursement from the public defense fund for an amount equal to fifty percent  
30 (50%) of the county's expenditures for indigent defense services provided after July  
31 1, 1989, to a defendant against whom the death sentence is sought under IC 35-50-2-  
32 9-, and an amount equal to twenty-five (25%) of the counties expenditures for  
33 indigent defense services provided to a defendant charged with a non-capital offense.  
34

35 (b) The county auditor shall specify in the request the total of the county's  
36 expenditures for defense services provided to the defendant.  
37

38 (c) The county auditor shall certify the request to the commission within  
39 ninety (90) days after the sentencing of the defendant or the termination of the  
40 appeal.  
41

42  
43 33-9-14-5 Reimbursement for defense services where death sentence sought  
44 against defendant  
45

1           Sec. 5. (a) Except as provided under section 6 of this chapter, upon  
2 certification by a county auditor and a determination by the commission that the  
3 request is in compliance with the guidelines set by the commission, the ~~state court~~  
4 ~~administration shall, before the fifteenth day of the month following the month in~~  
5 ~~which the certification is received, commission shall quarterly~~ compute an amount of  
6 reimbursement due the county that is equal to fifty percent (50%) of the county's  
7 certified expenditures for defense services provided for a defendant against whom the  
8 death sentence is sought under IC 35-50-2-9, and ~~twenty five percent (25%) of the~~  
9 ~~county's certified expenditures for defense services in non-capital felony cases.~~ The  
10 state court administrator shall then certify to the auditor of state the amount of  
11 reimbursement owed to a county under this chapter.  
12

13           (b) Upon receiving certification from the state court administrator, the auditor  
14 of state shall issue a warrant to the treasurer of state for disbursement to the county  
15 of the amount certified.  
16

17 33-9-14-6       Suspension of payment of reimbursement  
18

19           Sec. 6. If the public defense fund would be reduced below fifty thousand  
20 dollars (\$50,000) by payment in full of all county reimbursement that is computed  
21 by the state court administrator in any month, the commission shall suspend payment  
22 of reimbursement to counties that is computed by the state court administrator during  
23 that month and the following two (2) months. At the end of the suspension period,  
24 the state court administrator shall certify all suspended reimbursement. If the public  
25 defense fund would be exhausted by payment in full of all suspended reimbursement,  
26 the amount certified by the state court administrator for each county entitled to  
27 reimbursement shall be prorated.  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

*city courts*  
*juv*  
*ment health*  
*fel/misd*

1 Chapter 15. County Public Defender Boards

3 33-9-15. County Public Defender Boards

5 Sec. 1. This chapter does not apply to a county that:

7 (1) contains a consolidated city or a county that contains only  
8 two (2) second class cities; or

*Marion*

10 (2) has a population of at least:

12 (A) two hundred fifty thousand (250,000) but  
13 not more than four hundred fifty thousand (450,000);  
14 or

*Allen.*

16 (B) one hundred fifty-five thousand (155,000)  
17 but not more than two hundred twenty thousand  
18 (220,000).

*Vanderburg.*

20 Sec. 2. As used in this chapter, "board" refers to a board established in an  
21 ordinance under section 3 of this chapter.

23 Sec. 3. (a) A county executive may adopt an ordinance establishing a county  
24 public defender board consisting of three (3) members. The county executive shall  
25 appoint one (1) member. The judges who exercise felony or juvenile jurisdiction in  
26 the county shall appoint by majority vote the other two (2) members.

28 (b) The members appointed by the judges may not be from the same political  
29 party. The members must be persons who have demonstrated an interest in high  
30 quality legal representation for indigent persons. However, a member may not be  
31 a city, town, or county attorney, a law enforcement officer, a judge, or a court  
32 employee.

34 (c) Each member of the board serves a three (3) year term beginning with the  
35 date of the member's appointment. A member appointed to fill a vacancy holds  
36 office for the remainder of the previous member's term. If a successor has not been  
37 appointed by the end of a member's three (3) year term, the member continues in  
38 office until the member's successor takes office.

39 (d) The members shall, by a majority vote, elect one (1) member to serve as  
40 chairman.

42 (e) Meetings shall be held at least quarterly and may be held at other times  
43 during the year at the call of the:

- 45 (1) chairman; or  
46 (2) other two (2) members

1 (f) A county executive may terminate the board by giving at least ninety (90)  
2 days written notice to the judges described in subsection (a).  
3

4 Sec. 4. A member is entitled to reimbursement from the county for traveling  
5 expenses and other expenses actually incurred in connection with the member's duties  
6 to the same extent as is provided to a state employee for traveling expenses and other  
7 expenses under the state travel policies and procedures established by the department  
8 of administration and approved by the budget agency.  
9

10 Sec. 5. (a) The board shall prepare a comprehensive plan that must include  
11 at least one (1) of the following methods of providing legal defense services to  
12 indigent persons:  
13

14 (1) Establishing a county public defender's office.

15  
16 (2) Contracting with an attorney, a group of attorneys, or a private organiza-  
17 tion.  
18

19 (3) Utilizing an assigned counsel system of panel attorneys for case-by-case  
20 appointments under section 9 of this chapter.  
21

22 (b) Upon review and approval by the county fiscal body, the plan shall be  
23 submitted to the commission one hundred eighty (180) days before the effective date  
of the plan for review and approval by the commission under IC 33-9-13-3.

24  
25  
26 Sec. 6. (a) If a county public defender's office is established under this  
27 chapter, the board shall do the following:  
28

29 (1) Recommend to the county fiscal body an annual operating budget for the  
30 county public defender's office.  
31

32 (2) Appoint a county public defender.  
33

34 (3) Submit an annual report to the county executive, the county fiscal body,  
35 and the judges described in section 3 of this chapter regarding the operation of the  
36 county public defender's office including information relating to caseloads and  
37 expenditures.  
38

39 (b) A county public defender shall be appointed for a term not to exceed four  
40 (4) years and may be reappointed. The county public defender may be removed from  
41 office only upon a showing of good cause. An attorney must be admitted to the  
42 practice of law in Indiana for at least two (2) years before the attorney is eligible for  
43 appointment as a county public defender.  
44

45 (c) The annual minimum salary of the county public defender shall be equal to the  
minimum salary of the circuit court judge of the same judicial circuit as the county public



1 defender, and shall be paid by the state from the state general fund in equal installments with  
2 payments being made once every two (2) weeks.  
3  
4

5 Sec. 7. A county public defender shall do the following:  
6

7 (1) Maintain an office as approved by the board.  
8

9 (2) Hire and supervise staff necessary to perform the services of the office  
10 after the staff positions are recommended by the board and approved by the county  
11 executive and the fiscal body.  
12

13 (3) Keep and maintain records of all cases handled by the office and report  
14 at least annually to the board and the commission concerning the operation of the  
15 office, costs, and projected needs.  
16

17 Sec. 8. (a) A county public defender may contract with an attorney, a group  
18 of attorneys, or a private organization to provide legal representation under this  
19 chapter.  
20

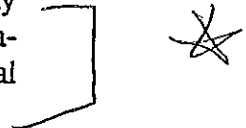
21 (b) The board shall establish the provisions of the contract under this section.  
22


23 (c) The county fiscal body shall appropriate an amount sufficient to meet the  
24 obligations of the contract.  
25

26 Sec. 9. The board may establish an assigned counsel system of panel  
27 attorneys to provide legal representation under this chapter that shall operate as  
28 follows:  
29

30 (1) The board shall gather and maintain a list of attorneys qualified to  
31 represent indigent defendants.  
32

33 (2) Upon the determination by a court that a person is indigent and entitled  
34 to legal representation at public expense, the court shall appoint an attorney to  
35 provide the representation from the list maintained by the board.  
36

37 (3) An attorney appointed to provide representation under this section may  
38 request authorization from the judge hearing the case for expenditures for investiga-  
39 tive services, expert witnesses, or other services necessary to provide adequate legal  
40 representation. 

41 (4) An attorney appointed to provide representation under this section is  
42 entitled to receive compensation and reimbursement for budgeted expenses by  
43 submitting a voucher to the court. Upon approval of the voucher by the appropriate  
44 judge, the voucher shall be presented to the county auditor who shall process the  
45 claim as other claims against county funds are processed. 

1 (5) An attorney appointed to provide representation under this section shall,  
2 upon completion of representation, report to the board information regarding the case  
3 disposition.  
4

5 Sec 10. (a) This chapter does not prevent a court from appointing counsel  
6 other than counsel provided for under the board's plan for providing defense services  
7 to an indigent person when the interests of justice require. A court may also appoint  
8 counsel to assist counsel provided for under the board's plan as co-counsel when the  
9 interests of justice require.  
10

11 Expenditures by a county for defense services not provided under the county public  
12 defender board's plan are not subject to reimbursement from the commission under I.C. 33-  
13 9-14.  
14

15 (b) If the judge of a court having criminal jurisdiction determines that an attorney  
16 provided under the county public defender board's plan is not qualified or available to  
17 represent a person charged in the court with a criminal offense and eligible for representation  
18 at public expense, or in the interests of justice an attorney other than the one provided for  
19 by the county defender board's plan should be appointed, the judge may make a written  
20 request to the state public defender to provide a qualified attorney for the defense of the  
21 person, attaching to the request a copy of the information or indictment. Expenditures for  
22 representation under this subsection shall be paid by the county according to a fee schedule  
23 approved by the commission and are eligible for state reimbursement under section 13 of this  
chapter.  
24

25  
26 Sec. 11. (a) A county public defender board shall submit a written request for  
27 reimbursement setting forth the total of the county's net expenditures for defense  
28 services to the county auditor not later than July 1 and December 31 of each year.  
29 The county auditor shall review the request and certify the total of the county's net  
30 expenditures for defense services to the auditor of state not later than January 31 and  
31 August 1 of each year. Upon certification by a county auditor and a determination  
32 by the commission that adequate funds are available for disbursement, the auditor of  
33 state shall issue a warrant to the treasurer of state for disbursement to the county of  
34 a sum equal to fifty percent (50%) of the county's certified net expenditures for  
35 defense services. For purposes of this section, "net expenditures" means the gross  
36 expenditures for defense services less the amounts received under IC 33-9-11.5 by  
37 the county under section 2(c) of this chapter.  
38

39 (b) If a county's public defender services fail to meet the standards established  
40 by rules of the commission, the commission shall notify the county public defender  
41 board and the county fiscal body of the failure to comply with the commission's  
42 rules. Unless the county public defender board corrects the deficiencies to comply  
43 with the rules within ninety (90) days after the date of the notice, the county's right  
44 to reimbursement from the state as provided in subsection (a) terminates at the close  
45 of that fiscal year. If correction is not made, the commission shall certify to the  
auditor of state that the right of reimbursement is terminated at the close of that fiscal

1        **year**

2  
3            Sec. 11 **12** A county public defender, a contract attorney, or counsel  
4 appointed by the court to provide legal defense services to indigent persons may not  
5 be a partner or employee at the same law firm that employs the county's prosecuting  
6 attorney or a deputy prosecuting attorney in a private capacity.