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MEMORANDUM

TO: Governor Eric J. Holcomb
Lieutenant Governor Suzanne Crouch
Chief Justice Loretta H. Rush
All Associate Justices of the Indiana Supreme Court
Sen. David Long, Senate President Pro Tempore
Sen. Timothy Lanane, Senate Minority Leader
Sen. Ryan Mishler, Chair, Senate Appropriations Committee
Sen. Karen Tallian, Ranking Minority Member, Senate Appropriations Committee
Rep. Brian Bosma, Speaker of the House
Rep. Terry Goodin, House Minority Leader
Rep. Timothy Brown, Chair, House Ways and Means Committee
Rep. Gregory Porter, Ranking Minority Member, House Ways and Means Committee
All Members of the Indiana General Assembly

FROM: Mark Rutherford, Chairman 

DATE: December 2017

SUBJECT: 2016-2017 Annual Report of the Indiana Public Defender Commission

The Indiana Public Defender Commission's Annual Report for Fiscal Year 2016-2017 provides an overview of the purpose and use of the Public Defense Fund. For the prior 27 years, the Commission, in cooperation with the General Assembly and the Indiana Supreme Court, 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.

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 public 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 pleased to report that a record 58 counties requested and received reimbursement for their non-capital public defense expenses during the fiscal year - representing over two-thirds of Indiana's

population. County non-capital public defense expenses continue to increase, especially in CHINS/TPR cases. During this time, the State of Indiana, through the Public Defense Fund, returned in excess of \$22.4 million to the counties for these expenses, easing their budget burden. The Commission also authorized over \$800,000 in death penalty reimbursement. Total county public defense expense reimbursement exceeded a record \$23 million.

The Commission is grateful that the Public Defense Fund's appropriation was increased in the 2017 Legislative Session to accommodate additional reimbursement obligations. This funding is the only state assistance provided to the counties for their public defense expenditures. In contrast, the state historically contributes over \$61 million for trial judges' salaries and \$29 million for prosecutors' salaries annually; both numbers exclude pensions and benefits, also provided by the state. Indiana's 92 counties are directly responsible for the majority of the more than \$77 million in tax dollars spent on public defense in Indiana each year.

The Public Defense Fund is a non-reverting state fund. When the balance available in the Fund is inadequate to reimburse participating counties for 40% of their eligible non-capital public defense expenditures, statute requires that reimbursements be prorated. From 2002 to 2009, county reimbursements averaged only 33% due to prorating. In the face of rising county participation and costs, the Commission is seeking legislative approval in 2018 to end prorating of Public Defense Fund reimbursements by authorizing augmentation so the state can maintain its commitment to 40% reimbursement of county public defense expenses.

The provision of adequate counsel in criminal and juvenile cases is guaranteed as a matter of constitutional law. Following the release of a national report critical of Indiana's public defense system, the Commission is moving forward with an independent task force on public defense. The task force has participation from all branches of government and will make recommendations to the Commission on reformation of Indiana's system of public defense. The Commission is not waiting, however, to address this fundamental issue: the lack of state-level reimbursement for misdemeanor representation through the Public Defense Fund. Currently, the Commission is statutorily prohibited from reimbursing misdemeanor public defense expenses. This has resulted in public defenders exceeding Commission misdemeanor caseloads by double, triple, or more. The Commission is seeking to authorize reimbursement of misdemeanor expenses in the 2018 Legislative Session.

The Commission looks forward to working with you to continue the progress that has been made to improve the quality of public defense services in Indiana. The goals of the Indiana Public Defender Commission include continued reimbursement to Indiana's counties for the public defense costs upon which they have come to rely while ensuring adequate 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 to provide any additional information at any time.