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# Public Defender Commission

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## **2019 Public Defender Commission Reform Initiatives**

Thank you for taking time to consider the Indiana Public Defender Council's 2019 Legislative Agenda.

### **General Background on Public Defense Services:**

When a person faces the loss of their liberty and cannot afford counsel to defend their rights, the U.S. and Indiana Constitutions require the State to provide counsel. In Indiana, the responsibility for providing that right has been delegated to the counties. The Public Defender Commission (an independent, judicial branch state agency) sets standards for the quality of public defense services. Under current statute, counties are eligible for a reimbursement of 50% for death penalty defense expenses and 40% of felony, juvenile, CHINS, and other cases, excluding misdemeanors, if the county affirmatively chooses to follow the standards.

### **Urgency for reforms and additional resources for Indiana Counties:**

A critical evaluation of indigent defense services in Indiana by the 6<sup>th</sup> Amendment Center led to the creation of the Indiana Task Force on Public Defense. The Task Force had members from all three branches of Indiana State Government and members from key interest groups. The Task Force studied Indiana's system for over one year and made recommendations for improvements. To respond to those recommendations, the Commission is pursuing the following key items during the 2019 session of the Indiana General Assembly.

**1. Base Budget:** All counties are permitted to opt into the Commission's reimbursement program. As additional counties choose to participate, a base budget is required to keep the reimbursement rates steady for the counties. In 1996, there were only 5 counties participating. By the end of this year, there will be 63 counties. The Commission is seeking a base budget funding increase to cover the additional counties that have/will join the Commission's reimbursement program.

**Fiscal Impact: \$4.47 million/year additional appropriation**  
**Statutory Change: none necessary**

**2. Reimbursement of All Case Types (including misdemeanors):** The statutory prohibition of misdemeanor reimbursement denies the Commission the authority to enforce the Commission's caseload standards in misdemeanor cases. The result is excessive caseloads in many of the 63 reimbursement counties. Misdemeanors are, by far, the largest volume of cases in the criminal courts in Indiana. The Indiana Supreme Court online data system for 2016 reports a total of 144,136 new misdemeanor cases filed, more than double the number of felony cases. 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." The consequences of a misdemeanor conviction can be significant, including loss of liberty, driving privileges, denial of educational loans, housing, and employment opportunities or professional licenses. Defendants may bear the cost of heavy fees and fines as a result of misdemeanor proceedings, without regard to whether or not the individual is able to afford to pay. The Commission is seeking statutory authority and funding to reimburse all Commission-participating counties for 40% of all case types where a right to counsel exists, including misdemeanors.

**Fiscal Impact: \$5.7 million/year additional appropriation**  
**Statutory Change: House Bill 1453**

**3. Statewide Appellate Office:** The Task Force found that in roughly one-third of counties, judges reported that they had difficulty finding competent experienced appellate counsel to appoint for appeals. Appellate representation is a specialized area requiring specific skills, training, experience and standards. Many counties simply do not have appellate specialists. Creation of a statewide appellate office to centralize appellate representation, including criminal, juvenile, CHINS/TPR cases, and other cases eligible for appointed counsel, will remove the challenge for judges in finding qualified appellate counsel and remove the burden on the counties to fund appellate counsel. In addition, it will enable the state to meet its constitutional responsibility to provide competent counsel to all persons who have a right to an appeal. The Commission is seeking statutory authority and funding to create a state appellate office to provide appellate representation where the right to counsel on appeal exists. This office would be empowered to assign appeals to staff attorneys or to qualified attorneys in the counties with the experience and training to provide appellate representation in the type of case assigned.

**Fiscal Impact: \$4.9 million/year additional appropriation**  
**Statutory Change: House Bill 1453**

**4. Regionalization of Public Defense Services:** Many rural counties have been experiencing difficulty finding qualified attorneys to appoint for public defender cases. In addition, the attorneys that are appointed in these counties are not being provided with the necessary support services such as investigators and social workers. To address this problem, the Commission is seeking legislation to authorize county executives to adopt an ordinance, in accordance with IC 36-1-7-3, to enter into an agreement with one or more counties to provide legal defense services to indigent persons. This agreement would provide for the administration of indigent defense services through a joint public defender board.

**Fiscal Impact: none**  
**Statutory Change: Senate Bill 488**

**5. Change to County Public Defense Boards:** County Public Defender Boards were initially created to remove public defenders from being at-will employees of judges. The boards were also intended to provide oversight of the quality of public defense services in counties. The Task Force found that many of the county public defender boards were not actively overseeing the quality or cost-effectiveness of indigent defense services in the county, nor were they enhancing the independence of public defenders from the judiciary. The Task Force recommends that the composition of the boards be changed by reducing the two judicial appointments to one judicial appointment and one appointment be made by the Commission.

**Fiscal Impact: none**  
**Statutory Change: Senate Bill 488**

For further information about the Task Force, this reform effort, or any matters related to the Indiana Public Defender Commission, please contact staff at [information@pdc.com.in.gov](mailto:information@pdc.com.in.gov). We look forward to speaking with you in person as the legislative session progresses, and thank you again for considering these important requests.