

IN THE
SUPREME COURT OF INDIANA

IN RE: REQUEST FOR RULE)
MAKING CONCERNING THE)
MARION COUNTY PUBLIC)
DEFENDER SYSTEM)

CAUSE NO. 49S00-9210-MS-822

RESPONSE OF THE INDIANA PUBLIC DEFENDER COUNCIL

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I. INTRODUCTION

The Indiana Public Defender Council provides support services to public defenders and attorneys in Indiana who are appointed to represent indigent defendants. The Council is an independent, judicial branch state agency governed by an eleven-member board of directors, ten of whom are elected by the members of the Council. The membership of the Council consists of attorneys who are salaried or contractual public defenders, or who are regularly appointed on a case-by-case basis. There are presently 823 attorney members of the Council.

The Board of Directors of the Council believes that this Court was correct in stating that "Marion County's problems in providing quality representation to poor people are not unique," and accepts this Court's invitation to "comment on broader issues relating to indigent defense statewide." We believe there are serious problems with the quality of representation provided to indigent persons in nearly all counties in Indiana. Although some of these problems may result from lawyers who do not care about their clients, or lawyers who lack the skills and abilities to provide effective representation, the vast majority of the problems with the quality of representation fall into one of the following categories:

- lack of independence of public defenders
- excessive caseloads
- inadequate compensation
- lack of support staff
- lack of funds for investigation and expert assistance

These systemic problems will not be easy or inexpensive to fix. It will require restructuring indigent defense services and a substantial increase in funding; neither of which is likely to occur without the intervention and leadership of this court.

Unlike most states, indigent defense services in Indiana are judicially controlled. The time has long passed for relying solely upon the inherent authority and good intentions of the trial courts to provide counsel for the accused. It is time to devise high-quality, cost-effective delivery systems for indigent defense services in Indiana that do not rely upon the inherent authority of the trial court. This may be done under I.C. 33-9-15-3 or the home rule authority of I.C. 36-1-3 which authorizes all but four counties (Allen, Marion, St. Joseph, and Vanderburgh) to create a three-member county public defender board to design and oversee indigent defense services in the county.

It is also time for the state to share some of the financial burden of funding indigent defense services. Indiana is in the minority of states that rely entirely upon counties to fund these constitutionally mandated services. The result is that indigent defense services are grossly underfunded in Indiana. In an attempt to obtain partial state funding, the Council has requested that the General Assembly enact S.B. 600 to amend I.C. 33-9-13 by authorizing the Public Defender Commission to reimburse counties for 25 % of their expenditures for indigent defense services in non-capital cases if the services meet standards adopted by the Commission.

Although the passage of S.B. 600 and the appropriation of additional state funding through the public defense fund would create a financial incentive to improve indigent defense services, partial state funding will not prevent excessive caseloads, inadequate compensation, and lack of funds for investigation and expert assistance. Our opinion is that the 25 % state funding will not be an adequate incentive to motivate the counties with the worst problems to make the necessary changes to qualify for the state reimbursement because this "carrot and stick" approach lacks the stick and offers only a small carrot.

We believe the most effective way to improve the quality of these indigent defense services is to follow the same model used in capital cases, i.e., a mandatory court rule and partial state funding through the Public Defender Commission that is linked to compliance with the court rule. This model combines the coercion of a rule and the reward of state funding without sacrificing local decision-making and control. Thus, even if legislation is enacted to authorize the Public Defender Commission to adopt standards for all indigent defense services, we recommend that the standards be adopted by this court as part of a mandatory court rule.

We have no reason to believe that the pervasive and long-standing problems resulting from the lack of independence and inadequate funding will be resolved unless this court exercises its rule making authority by adopting a comprehensive rule for indigent defense services in all cases. Therefore, we recommend for this court's consideration a court rule containing the following provisions:

- a requirement that a county public defender board be established in every county
- standards and procedures for determining indigence
- standards for the use of recoupment under I.C. 33-9-11.5
- standards for the forfeiture of cash deposit bail under I.C. 35-33-8-3(b)
- minimum qualifications of counsel for appointment

- standards for reasonable compensation of public defenders, contract attorneys, and assigned counsel
- a requirement that requests for funds for investigative, expert, or other assistance be made ex parte and that any hearing be held in camera
- maximum caseload standards for public defenders

Attached as Appendix A is a proposed new Criminal Rule 26 for indigent defense services in non-capital cases. The proposed rule contains the specific recommendations of the Council, except for caseloads and compensation of public defenders. We are presently collecting data on the caseloads and compensation and will submit specific recommendations at a later time if the court desires.

II. NATIONAL STUDIES ON INDIGENT DEFENSE SERVICES

Today, 75% of persons charged with felonies in this country are represented by lawyers paid with public funds. The total national expense for indigent defense is estimated at \$1.5 billion a year.

Although Indiana's indigent defense system has certain unique features, we are not alone in experiencing problems in indigent defense services. Inadequate funding and excessive caseloads have spawned litigation in several jurisdictions. Assigned counsel fee schedules have been declared unconstitutional in six states, and litigation regarding public defender caseloads is currently pending in four states. In 30 states, task forces and study commissions for indigent defense services have been established by state and local governments, the judiciary, and bar organizations.

The following studies and reports are helpful references for understanding the issues and problems in indigent defense services in the United States:

Report of the National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States (1976);

Lefstein, Norman, Criminal Defense Services for the Poor, American Bar Association, Standing Committee on Legal Aid and Indigent Defendants (May 1982);

Spangenberg, Robert, National Criminal Defense Systems Study, United States Department of Justice, Bureau of Justice Statistics (Sept. 1986);

Spangenberg, Robert, Containing the Costs of Indigent Defense Programs: Eligibility Screening and Cost Recovery Procedures, United States Department of Justice, National Institute of Justice (September 1986);

Wilson, Richard J., Indigent Defense Resources: An Annotated Bibliography, ABA Standing Committee On Legal Aid And Indigent Defendants, Bar Information Project;

Spangenberg, Robert, An Introduction To Indigent Defense Systems, ABA Standing Committee On Legal Aid And Indigent Defendants, Bar Information Program;

Criminal Justice In Crisis, ABA Criminal Justice Section (November 1988); and

Murphy, Timothy, System Balance: Indigent Defense And The War On Drugs, National Center For State Courts (October 1990).

III. RIGHT TO COUNSEL

A. Federal

Providing and funding indigent defense services is a relatively recent challenge for states resulting from the following cases of the United States Supreme Court that have held that the United States Constitution guarantees the right to counsel in state courts:

Powell v. Alabama (1932), 287 U.S. 45 (held that the Due Process Clause of the Fourteenth Amendment requires the appointment of counsel in capital cases);

Gideon v. Wainwright (1963), 372 U.S. 335 (held that the Sixth Amendment requires the states to provide counsel to all indigent persons accused of a serious crime);

Douglas v. Alabama (1963) 372 U.S. 353 (held that the Equal Protection Clause of the Fourteenth Amendment requires the appointment of counsel on direct appeal for indigent persons);

In Re Gault (1966), 387 U.S. 1 (held that the Due Process Clause of the Fourteenth Amendment guarantees the right to counsel to juveniles); and

Argersinger v. Hamlin (1972), 407 U.S. 25 (extended the holding in Gideon to include the right to counsel in all crimes (including misdemeanors) which carry a possible sentence of incarceration).

B. Indiana

Long before the states were required to provide counsel for indigent persons under the

federal constitution, this court was a pioneer in holding that trial courts have the authority to appoint counsel at public expense under the state constitution. In Blythe v. State (1853), 4 Ind. 525, this court held that an attorney could not be held in contempt for refusing to defend a person without pay. The court also found that the statute requiring an attorney to prosecute or defend a case without a fee was void because it was in conflict with the provision in Article 1, Section 21, of the Indiana Constitution that provides "no man's particular services shall be demanded without just compensation."

In Webb v. Baird (1854), 6 Ind. 13, this court dealt with the issues of who determines the amount of compensation and who pays. Baird was appointed by the Tippecanoe Circuit Court to represent a person indicted for burglary who was destitute of means to employ counsel. The court also entered an order allowing payment of \$25 to Baird. Webb, the county auditor, refused to draw a warrant on the county treasury for the \$25. To collect his fee of \$25, Baird filed a petition for mandamus in the Tippecanoe Court of Common Pleas. Webb's response was that the Circuit Court had no authority to order Baird to represent the defendant or to order the auditor to pay Baird out of the county treasury. The Tippecanoe Court of Common Pleas ordered Webb to pay Baird \$25 and Webb appealed.

On appeal, this court reaffirmed the holding in Blythe v. State, supra, that the trial court could not demand Baird's services as an attorney "without any reward," because it would be unconstitutional under Article 1, Section 21, of the Indiana Constitution. The court then dealt with the issue of whether the Circuit Court had the power to order that the attorney be paid by the county of Tippecanoe, and concluded:

Yet is the defence of the poor an imperative duty resting somewhere. We have seen that it does not devolve upon the private citizen. It must, therefore, devolve upon the public or some portion of it.

* * *

It seems eminently proper and just, that the treasury of the county, which bears the expense of his support, imprisonment and trial, should also be charged with his defense.

Id., at 18-19.

Although this court concluded that the Circuit Court had inherent authority to appoint counsel at county expense, it also found that the judge did not have authority to "fix the measure

of compensation," because "that, like other cases of implied assumpsit, is to be determined by due course of law." Id., at 20.

The holding in Webb v. Baird was reaffirmed in several subsequent cases and was used as authority for the appointment of counsel at county expense to assist the state in criminal cases. See, e.g., Tull v. State ex rel. Glessner (1884), 99 Ind. 238. This practice led to the enactment in 1899 of the County Reform Law, Acts 1899, p. 352, c. 154, Section 27, which among other things limited the authority of a court to appoint an attorney to assist the state in the prosecution of criminal offenses within the county. The County Reform Law was reviewed in Turner v. Board of Commissioners of Elkhart County (1902), 158 Ind.16, 63 N.E. 210, where the court held that an attorney appointed to assist in the prosecution of a criminal case was not entitled to payment unless there was an existing appropriation made by the county council to pay for the services.

The holding in Turner v. Board of Commissioners of Elkhart County, supra, was applied to indigent defense in Board of Commissioners of Miami County v. et al. v. Mowbray (1903), 160 Ind., 10, 66 N.E. 46, and Board of Commissioners of Vigo County v. Moore (1929), 93 Ind.App. 180, 166 N.E. 779. Both cases held that, under the County Reform Law, the courts have no power to bind the county for fees to attorneys defending paupers in criminal cases beyond the amount of the existing appropriation for that purpose. Thus, although a court had inherent authority to appoint counsel in a criminal case, and counsel had a right to compensation under Blythe v. State, supra, and Webb v. Baird, supra, the court had no authority to compel payment, and counsel had no right to expect payment unless the county had appropriated funds for this purpose.

This situation prevailed until the decision in Knox County Council v. State ex rel. Kirk (1940), Ind., 29 N.E.2d 405, which involved an order by the Knox Circuit Court for payment to two attorneys appointed to defend a pauper charged with murder. Warrants were issued by the Knox County auditor and countersigned by the treasurer, but payment was refused for want of funds. A mandate was sought to compel the county council to appropriate sufficient funds to pay the warrants. The response of the county council was that under the County Reform Act of 1899, there can be no allowance or recovery against the county unless there is an existing appropriation by the county council at the time, and there was no such appropriation.

On appeal, this court held that the section of the County Reform Act that denied the courts the right to order payment to defense counsel unless there is a pre-existing appropriation, was unconstitutional. In overruling Board of Commissioners of Miami County v. et al. v. Mowbray, supra, and Board of Commissioners of Vigo County v. Moore, supra, this court stated:

The conclusion seems unavoidable that it is the duty of courts to see that criminal cases are tried; that these cases cannot be legally tried unless the defendant, if he is a pauper, is provided with counsel; that attorneys cannot be compelled to serve without compensation; and therefore that, in order to conduct a legal trial, the court must have power to appoint counsel, and order that such counsel shall be compensated if necessary; and that the right to provide compensation cannot be made to depend upon the will of the Legislature or of the county council.

Id., at 413.

Since Knox County Council v. State ex rel. Kirk, supra, this court has consistently held that trial courts have the inherent authority to appoint counsel and mandate funds for this purpose.

Indiana has also been a leader in expanding the right to counsel under the state constitution. For example, more than 20 years before Argersinger v. Hamlin, supra, this court in Bolkovac v. State (1951), 98 N.E.2d 250, held that Art. 1, Section 13, of the Indiana Constitution guarantees counsel in all misdemeanor cases. In addition, the right to counsel has been expanded in Indiana in the following cases:

In re Marriage of Stariha (1st Dist. 1987), Ind., 509 N.E.2d 1117 (child support contempt);

Kennedy v. Wood (4th Dist. 1982), Ind. App., 439 N.E.2d 1367 (paternity); and

Russell v. Douthitt (1973), Ind., 304 N.E.2d 793 (parole revocation).

IV. INDIGENT DEFENSE SYSTEMS AROUND THE COUNTRY

A. Methods for Providing Counsel

Although a wide variety of indigent defense programs have evolved in other states since the Gideon decision, for purposes of analysis and comparison, there are three basic models - public defender, assigned counsel and contract.

- The public defender model involves a public agency or private non-profit organization with full-time staff attorneys and support personnel.
- The contract model involves a contract with an attorney, group of attorneys, bar association, or a private non-profit organization that provides representation in some or all of the indigent cases in the jurisdiction.
- The assigned counsel model involves the assignment of indigent criminal cases to private attorneys on either a systematic or an ad hoc basis.

1. Public Defender Model

The public defender model predates Gideon by 50 years. The first defender program was established in Los Angeles in 1913. This program was established to provide a core group of experienced criminal lawyers to improve upon the pro bono representation offered by members of the private bar. Although a few other public defender programs were established in the first half of this century, use of the public defender model did not proliferate around the country until after the landmark right to counsel decisions by the United States Supreme Court in the 1960's and 70's.

The most recent comprehensive national study of indigent defense programs, the National Criminal Defense Systems Study, U.S. Department of Justice, Bureau of Justice Statistics (September 1986), reported that 37% of all counties in the nation had public defender systems, and a public defender program existed in virtually every county with a population exceeding 750,000 residents.

2. Contract Attorney Model

In a contract program, the jurisdiction or court enters into contracts with private attorneys, law firms, bar associations or non-profit organizations to provide representation to indigent defendants. The contract may be for all cases or for a more limited purpose, such as cases where the public defender has a conflict of interest, or a certain category of cases (e.g., juvenile or mental health).

In 1986, the report, National Criminal Defense Systems Study, estimated that 10% of the counties nationwide employed a contract program as the primary means of providing representation. The Bar Information Program (BIP) of the ABA estimates that in 1992 that

figure may be over 20%.

Although the structure of the contract programs varies, there are essentially two main types: fixed price contracts and fixed fee-per-case contracts.

a. Fixed Price Contracts

The determining characteristic of a fixed price contract program is that the contracting lawyer, law firm or bar association agrees to accept an undetermined number of cases within an agreed upon contract period for a single, flat fee. The contracting organization or attorneys are usually responsible for the cost of support services, investigation, and expert witnesses for all of the cases. Even if the actual caseload in the jurisdiction is higher than was projected, the contractor is responsible for providing representation in all cases without additional compensation.

This type of contract has been criticized by some courts because of the lack of quality control safeguards. In State v. Smith (1984), 681 P.2d 1374, 1381, the Arizona Supreme Court found fault with this type of system used in Arizona because:

- (1) The system does not take into account the time that the attorney is expected to spend in representing his share of indigent defendants;
- (2) The system does not provide for support costs for the attorney, such as investigators, paralegals and law clerks;
- (3) The system fails to take into account the competency of the attorney. An attorney, especially one newly-admitted to the bar, for example, could bid low in order to obtain a contract, but would not be able to adequately represent all of the clients assigned...; and
- (4) The system does not take into account the complexity of each case.

In addition, the use of fixed price contracts has been criticized by the National Legal Aid and Defender Association and the American Bar Association because it has occasionally resulted in competitive bidding with the award going to the lowest bidder. In 1985, the American Bar Association's House of Delegates approved a resolution condemning the awarding of contracts for indigent defense services based on cost alone.

b. Fixed Fee-per-Case Contracts

The distinguishing feature of a fixed fee-per-case contract is that when a private lawyer, law firm, or organization enters into a contract to provide indigent defense representation, the contract specifies a predetermined number of cases for a fixed fee per case. Frequently, funds for support services, investigation, secretarial, and expert witnesses will be included in the contract. The contracting attorney typically submits a monthly bill indicating the number of cases handled during the period. Once the predetermined number of cases has been reached, the option exists to re-negotiate the contract or refuse additional appointments.

3. Assigned Counsel Model

Assigned counsel programs utilize private attorneys to represent indigent defendants on a case-by-case basis. There are two varieties of this model: (1) the ad hoc system; and (2) the coordinated assigned counsel program.

a. The Ad Hoc Assigned Counsel Program

In an ad hoc assigned counsel program, the appointment of counsel is generally made by the court without benefit of a formal list or rotation method (thus, "ad hoc") and without specific qualifications of attorneys for appointment. Attorneys are paid either on an hourly basis (e.g., \$40/hour for work out-of-court and \$50/hour for work in-court) or a flat fee per case (e.g., \$250 for a misdemeanor or \$1,000 for a felony). In most jurisdictions, court-appointed counsel must petition the court for funds for investigative services, expert witnesses and other necessary costs of litigation.

While this method remains the predominant indigent defense system in the country, particularly in less populated counties, it is frequently criticized for fostering patronage and ignoring the experience level or qualifications of the appointed attorneys. Some studies also report that it is not uncommon for many of the appointments to be taken by recent law school graduates looking for experience and by more experienced, but marginally competent, attorneys who need the income.

b. The Coordinated Assigned Counsel Program

The coordinated assigned counsel programs are distinct from the traditional ad hoc assigned counsel programs in that they generally require attorneys to meet minimum qualification standards in order to be appointed, and they provide a greater degree of supervision, training, and support for the attorneys who are on the appointment panels. The coordinated assigned counsel system has been found to be a viable alternative to the public defender model when properly administered and adequately funded.

B. How States Organize Their Indigent Defense Systems at the Trial Level

There is great diversity in other states as to whether indigent defense services are provided by the state or local units of government and as to the degree of local autonomy in deciding what type of system is used.

1. Statewide Systems

Twenty states have created statewide indigent defense systems that operate under the executive or judicial branch of government, or as an independent public or private agency: Alaska, Colorado, Connecticut, Delaware, Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, Oklahoma, Rhode Island, Tennessee, Vermont, West Virginia, Wisconsin and Wyoming. Attached as Appendix B is a table provided by the Spangenberg Group on behalf of the ABA Bar Information Program, containing information on these statewide systems.

Some statewide indigent defense systems may contain a mix of indigent defense models within the state, including public defender offices, assigned counsel and contract programs. Typically, public defenders serve metropolitan areas, and assigned counsel programs serve the less populous regions.

2. County and Regional Systems

Twenty-one states delegate the responsibility to organize and operate an indigent defense system to the individual county or a group of counties comprising a judicial district: Alabama, Arizona, Arkansas, California, Georgia, Idaho, Indiana, Louisiana, Maine, Michigan,

Mississippi, Montana, Nebraska, New York, North Carolina, South Carolina, South Dakota, Texas, Utah and Washington.

The decision as to whether the jurisdiction uses a public defender, contract, or assigned counsel system is made at the local or regional level by the county legislative or executive body, the local bar association, the local judges, or a combination of these groups. These systems do not have a state board, commission, or administrator, and therefore have little or no programmatic oversight at the state level.

3. State Commission Systems

Four states have a system that combines state oversight with substantial local autonomy. In these systems, a state commission or board provides overall direction through standards and guidelines for the operation of local programs. The principal feature of these systems is that uniform policy is required across the state to ensure accountability and quality, while local jurisdictions within the state select and operate the type of program (public defender, assigned counsel, contract) that best suits their needs. Iowa, Kansas, North Dakota, and Ohio all have such commissions or boards, although the duties and responsibilities vary considerably.

4. Other Systems

There are six states and the District of Columbia that have indigent defense systems which do not fit into the above three categories:

- In the District of Columbia, there is both a public defender program (Public Defender Service) and a large assigned counsel program which handles the majority of cases.
- In Florida, the legislature has created 20 independent publicly elected public defenders for each judicial district. While this structure is mandated by the state, there is no state oversight at the trial level.
- In Illinois, every county with a population of 35,000 or more is required by statute to have a local public defender program. In less populous counties, public defender programs are optional. There is no state oversight at the trial level.
- In Pennsylvania, by statute, every county must have a local public defender program. The local programs are not subject to any state oversight at the trial level.

- In Nevada, there are two large county public defender programs in Reno and Las Vegas. The rest of the state is served by the Nevada State Public Defender upon option of each county. If the county opts out of the state public defender system, it must establish its own program.
- In Oregon, all county programs are determined through a contract negotiation process with the Office of the State Court Administrator.
- In Virginia, the legislature can statutorily create a public defender program in any area of the state. Areas not designated for public defender programs are served by local assigned counsel programs.

C. How States Fund Their Indigent Defense Systems at the Trial Level

There is also great diversity as to the method of funding indigent defense services. Twenty-two states fund their trial system exclusively through state funds; nine states rely exclusively on county funds; and eighteen states use a combination of state and county funds. Attached as Appendix C is a chart indicating the funding source for indigent defense services at the trial level in each of the 50 states and the District of Columbia.

The following examples illustrate the diversity of how indigent defense systems are funded at the trial level.

- In Florida, the state provides the largest share of funds, but the counties are required by statute to pay the cost of assigned counsel in conflict of interest cases, and when counsel is appointed to provide caseload relief to the public defender. The counties must also provide funding for certain other expenses, including office space, utilities, telephone and custodial services.
- In Kentucky, the Office of the Public Advocate determines the amount of state funds allocated to each county. The counties must provide the balance of the funds they need. In practice, most counties rely only on the state allocation.
- In Kansas, Montana and North Dakota, the state funds felony representation in the courts of general trial jurisdiction, and the counties fund representation in the courts of limited jurisdiction.
- In South Carolina the state allocates \$672 per 1,000 population to each county, and the counties must pay the rest.
- In New York, the counties are required to fund the daily operation of their indigent defense programs. The state provides funds for special purposes in certain counties. For example, some counties receive state funds for programs such as the Major

Offense Program, State Felony Program, Special Narcotics Program, Emergency Felony Program, and the Major Violent Offense Program.

- In Wyoming, by statute, the state provides 85 % of the annual cost of indigent defense and the counties 15 %.
- In Alabama, a Fair Trial Tax Fund has been created to support indigent defense services. The revenue from this fund consists of a \$7 filing fee for all civil cases, a \$7 tax on all criminal convictions, and a \$10 fee for each civil case in which there is a jury demand.
- In Ohio, the State reimburses the counties for up to 50% of their annual expenditures on indigent defense. The program in Ohio is supported in large measure by a \$10 assessment on all convictions other than minor traffic offenses. The \$10 assessment is added to the bail premium on all defendants who post bond or at the disposition of the case if no bail is posted. If the defendant is found not guilty or the charges are dismissed, the clerk must return the defendant's ten dollars. Approximately \$17 million is raised on an annual basis through this assessment.

D. How States Organize Their Appellate Indigent Defense Systems

The following are the predominant methods used to provide appellate representation in other states.

1. State Public Defender Organizations

There are 20 states with a state public defender office. In 19 of these 20 states, there is an appellate division within the state public defender office that provides and coordinates appellate representation throughout the state.

2. State Appellate Defender Program

Seven states have established a separate state appellate public defender program funded exclusively by the state: California, Illinois, Indiana (post-conviction only), Michigan, North Carolina, Oregon and South Carolina.

3. Assigned Counsel System

There are several states in which private attorneys are appointed on a case-by-case basis. In some of these states, the supreme or appellate court makes the appointment of counsel. In

others, the trial court makes the appointment. Examples of this type of system can be found in Maine, North Dakota, Texas, and Virginia. A statute or court rule specifies the rates for compensation of private counsel in some states; others leave the amount of compensation to the discretion of the appointing authority.

4. Mixed System

In some states, by statute or court rule, appellate representation is provided by the local public defender or contract program. In a few states where the local public defender provides appellate representation, expenditures for these services are built directly into the public defender's budget by the funding source.

5. Other Methods

There are other unique variations on these methods for providing appellate defender services. For example, in Florida, there are five regional appellate defender programs which handle direct appeals, and a state office (Capital Collateral Representative) charged exclusively with providing post-conviction representation in death penalty cases. In Washington State, there is a private, non-profit appellate public defender for one appellate district and an assigned counsel program in each of the other two.

E. How States Fund Their Appellate Indigent Defense Systems

Funding for appellate representation is provided either by state, by county or by a combination of both. In 32 states, appellate representation is funded entirely by the state. In 15 states, the funding is provided exclusively by the counties. In 4 states, the costs of appellate representation is shared by the state and the counties. The trend over the past several years has been to fund appellate services at the state level. Attached as Appendix D is a table indicating the source of funding for appellate representation in each of the 50 states and the District of Columbia.

V. INDIGENT DEFENSE STATUTES IN INDIANA

A. State

1. State Public Defender

The Office of the Public Defender of Indiana was created in 1945. Under I.C. 33-1-7-2, the state public defender provides representation to indigent inmates in the department of correction in any post-conviction proceeding testing the legality of the conviction, commitment, or confinement, if the time for direct appeal has expired. In addition, the state public defender is authorized by I.C. 33-9-11-2 to accept trial and direct appeal appointments from courts having criminal jurisdiction, in which case the county is required to pay for the services of the state public defender according to a fee schedule approved by this Court.

2. Public Defender Council

In 1977, the Indiana Public Defender Council was created by I.C. 33-9-12-1 to provide support services to public defenders and court appointed counsel. The services currently provided by the Council include: training; publications; research; consultation on cases; and sentencing and mitigation support.

3. Public Defender Commission

In 1989, the General Assembly created the Indiana Public Defender Commission. Under I.C. 33-9-13-3, the Commission is required to: (1) make recommendations concerning standards for indigent defense services in capital cases; (2) adopt guidelines under which counties will be eligible for reimbursement under I.C. 33-9-14; and (3) make recommendations concerning the delivery of indigent defense services in Indiana.

Under I.C. 33-9-14-5, counties are eligible for 50% reimbursement from the state public defense fund for expenditures for defense services in capital cases if the Commission determines that the services were provided in compliance with guidelines set by the Commission. The guidelines currently in effect require compliance with Criminal Rule 24.

The public defense fund receives \$650,000 each year from the state general fund under I.C. 33-9-7-5 and is administered by the State Court Administrator.

B. County

1. County Public Defender Boards

In 1991, all counties, except Allen, Marion, St. Joseph, and Vanderburgh, were authorized by I.C. 33-9-15-1 to establish a three-member county public defender board. Under I.C. 33-9-15-5, a public defender board is required to prepare a comprehensive plan for the county's indigent defense services that must include at least one of the following methods of providing defense services to indigent persons:

- (1) a county public defender office;
- (2) contracts with an attorney, a group of attorneys, or a private organization; or
- (3) an assigned counsel system of panel attorneys for case-by-case appointments.

2. Public Defender Offices in Lake and Marion County

In 1951, the judges of the criminal courts in Lake and Marion County were authorized by I.C. 33-9-6 et seq., to appoint public defenders at a salary fixed by statute. This statute was repealed in 1978 when the new penal code was enacted.

3. Contracts

Since 1971, judges in counties with a population under 400,000 have been authorized by I.C. 33-9-10-1 to contract with an attorney or group of attorneys to provide legal services to indigent persons charged with the commission of a crime. This statute applies to all counties in Indiana except Lake and Marion.

VI. METHODS FOR PROVIDING COUNSEL IN INDIANA

Except for those courts that use a contract under I.C. 33-9-10, all indigent defense services provided at trial and on direct appeal in Indiana are still provided under the inherent authority of the trial courts. This has resulted in the evolution of a variety of models for providing indigent defense services in Indiana. In an attempt to identify the type of indigent defense systems used in Indiana, the Council sent a survey in January of 1993 to all courts with criminal and juvenile jurisdiction. Attached as Appendix E is a table containing information on the indigent defense systems used by the courts that responded to this survey.

A. Public Defender Programs

In eleven counties, county public defender offices have been created under the inherent authority of the court: Allen, Clark, DeKalb, Elkhart, Lake, Marion, Monroe, Rush, Tippecanoe, Vigo, and Wayne. The public defender offices in Monroe County and the Marion Municipal Court and Superior Court, Juvenile Division, employ primarily full-time public defenders. The other public defender offices employ primarily part-time, salaried public defenders.

Twenty-nine counties employ part-time, salaried public defenders who work out of their private law offices: Boone, Brown, Carroll, Clay, Daviess, Dearborn, Delaware, Dubois, Floyd, Fulton, Grant, Harrison, Howard, Jackson, Jay, Johnson, LaGrange, Lawrence, Madison, Marshall, Miami, Newton, Ohio, Porter, Putnam, St. Joseph, Steuben, Vanderburgh, and Whitley.

No county has adopted an ordinance under I.C. 33-9-15-3 to establish a county public defender board. However, the judges in LaPorte County have recently indicated an interest in creating a county public defender board under this statute.

In Marion County, the City-County Council exercised its home rule authority and adopted an ordinance in April of 1992 that created a nine-member county public defender board and a county public defender agency. This ordinance was not implemented for a variety of political reasons. On February 22, 1993, the City-County Council amended this ordinance in order to obtain the support of the county judiciary. As of the time of this report, it appears that the amended ordinance will be implemented.

B. Contract Attorney Programs

Under I.C. 33-9-10, courts in counties with a population under 400,000 are authorized to contract with an attorney or group of attorneys to provide indigent defense representation. We were unable to find any courts using a fixed fee-per-case contract. Courts in forty counties use a fixed price contract for providing indigent defense services: Bartholomew, Carroll, Cass, Crawford, Dubois, Floyd, Fountain, Franklin, Fulton, Grant, Greene, Hamilton, Harrison, Hendricks, Henry, Huntington, Jasper, Jefferson, Johnson, Knox, LaGrange, LaPorte, Marshall, Miami, Montgomery, Morgan, Owen, Pike, Porter, Randolph, Ripley, Rush, Scott, Shelby,

Starke, Tipton, Vermillion, Wabash, Warrick, and Washington. Appendix E indicates the courts that use contracts, the number of contracts, and the amounts of the contracts.

C. Assigned Counsel Programs

Twenty counties in Indiana use the assigned counsel model as their primary system for providing indigent defense representation: Adams, Benton, Blackford, Clinton, Decatur, Fayette, Gibson, Hancock, Martin, Orange, Parke, Perry, Posey, Pulaski, Spencer, Sullivan, Union, Warren, Wells, White. In addition, a number of courts use the assigned counsel system as a secondary system to handle conflict of interest of cases. Appendix E indicates the courts that use an assigned counsel system, the number of attorneys who regularly receive appointments, and the hourly rates paid by the courts. All of the assigned counsel programs in Indiana are judicially administered. We are unaware of the existence of any coordinated assigned counsel program in Indiana.

VII. RECOMMENDATIONS

A. Independence - Public Defender Boards

Indiana's early case law that recognized the trial court's inherent authority to appoint counsel and order payment has become an Achilles' heel in the past two decades. While the majority of other states have enacted legislation since the decision in Gideon to create delivery systems for indigent defense services that are independent from the judiciary, Indiana continues to rely on the inherent authority of the trial court to provide these constitutionally mandated services. As previously indicated, a number of courts have used their inherent authority to create public defender offices or salaried public defenders in order to meet their responsibility to provide counsel to the accused. As a result, Indiana is one of the few states where an accused may be represented by an at-will employee of the judge before whom the accused stands charged. Although most trial judges in Indiana do not intentionally abuse their power over the counsel for the accused, there can be little argument that this employment relationship is an unhealthy environment for zealous advocacy that occasionally requires challenging the judge's conduct and rulings.

Another problem with public defender programs that are created by judges is that they

tend to serve the courts rather than the clients. For example, public defenders in several counties, including Lake and Marion, are assigned to courts rather than clients and, therefore, do not follow the case if it is transferred to another court. In addition, in most counties public defenders can be removed from the case without the consent of the attorney or the client.

Clearly, the employment of public defenders by judges does not guarantee the integrity of the attorney-client relationship or professional independence as recommended in Standard 5-1.3 of the ABA Standards for Criminal Justice, Chapter 5: Providing Defense Services (3rd Ed. 1990):

(a) The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by the administrators of the defender, assigned-counsel and contract-for-services programs.

(b) An effective means of securing professional independence for defender organizations is to place responsibility for governance in a board of trustees. Assigned-counsel and contract-for-service components of defender systems should be governed by such a board. Provisions for size and manner of selection of boards of trustees should assure their independence. Boards of trustees should not include prosecutors or judges. The primary function of boards of trustees is to support and protect the independence of the defense services program. Boards of trustees should have the power to establish general policy for the operation of defender, assigned-counsel and contract-for-service programs consistent with these standards and in keeping with the standards of professional conduct. Boards of trustees should be precluded from interfering in the conduct of particular cases. A majority of the trustees on boards should be members of the bar admitted to practice in the jurisdiction.

We believe that the goal of independence would be substantially achieved by the creation of a county public defender board under either I.C. 33-9-15 or a county's home rule authority, I.C. 33-1-3, as Marion County has recently done. This would preserve local control, yet remove public defenders from the direct control and supervision of judges. Thus, we recommend in the proposed Criminal Rule 26 that if a county does not have a county public defender board created by a county ordinance, the courts should be required to use their inherent authority to create a board consistent with the recommendations in Standard 5-1.3 of the ABA Standards for Criminal Justice, Chapter 5: Providing Defense Services (3rd Ed. 1990).

B. Indigence Determination

The test for determining indigence in Indiana is the substantial hardship test. The actual decision as to whether to appoint counsel is usually made at the initial hearing upon cursory questioning of the accused with no verification of the information provided. This contributes to the wide variation in the indigence rates from court to court.

The consensus of public defenders we consulted was that in high volume, urban counties, judges appoint counsel to persons who are not eligible in order to move the cases. This tendency has resulted in an increase in the rate of indigence in nearly all of the courts with heavy caseloads. In an attempt to obtain more accurate data on indigence rates, the Council sent a survey in January of 1993 to all trial courts with criminal jurisdiction requesting information about the estimated indigence rate for felonies, misdemeanors, juvenile delinquency, and appeals. The responses indicated a surprising disparity in indigence rates for these categories. For example, 15 courts indicated an indigence rate of 20% or less for felonies, and 34 courts indicated that the indigence rate for felonies was 90% or more.

The wide variation in indigence rates is also reflected in the quarterly case status reports filed with the State Court Administrator. In 1992, these reports requested for the first time the number of cases with court-appointed counsel. Attached hereto as Appendix F is a chart of the indigence rates estimated by the courts responding to the Council's survey and the indigence rates based on the quarterly case status reports for 1992.

Although some variance in indigence rates in the various courts is to be expected because of demographic differences and types of cases, the amount of variance indicated in Appendix F raises questions about the quality and consistency of the decision making as to who is entitled to counsel provided at public expense. The perception of public defenders is that the decision as to whether the accused is appointed counsel depends primarily upon the philosophy of the judge making the decision and the need to expedite the docket.

In order to improve the decision-making as to whether the accused is entitled to counsel at public expense, we recommend that this court adopt standards for indigence as contained in our proposed Criminal Rule 26 in Appendix A. In addition, in those counties where it is cost-effective, we recommend that eligibility screening and verification should be conducted by someone other than the judge prior to the initial hearing.

C. Recoupment & Cash Deposit Bail Forfeiture

Since 1989, Indiana courts have been authorized under I.C. 33-9-11.5-6 to order the accused to repay the costs of defense services provided at public expense. Payments by defendants are deposited in the county supplemental public defender fund established under I.C. 33-9-11.5-1.

Although requiring a person to contribute to the costs of his or her defense is appropriate in many cases, there are several areas of concern with the present use of this statute. Most of the courts using the recoupment authority of I.C. 33-9-11.5-6 do not advise defendants at the time of the appointment of counsel that the court may order the defendant to repay the county for the costs of defense services. A few courts are also using a fixed fee schedule, based on the type of case and method of disposition, to assess the costs to the defendant without making an assessment as to the extent of the burden that the payment of costs would impose on the defendant and his or her dependents as required by I.C. 33-9-11.5.

Since the order to repay the county is enforceable as a civil judgement and there is a potential conflict of interest for the public defender, we recommend that this court adopt standards and safeguards for the use of recoupment under I.C. 33-9-11.5. See Appendix A, section (C).

In 1989, the General Assembly also enacted I.C. 35-33-8-3.1, which requires that the 10% deposit for a cash bond posted by a person represented by court appointed counsel be deposited in the county supplemental public defender fund rather than returned to the defendant.

Standards and safeguards for cash deposit forfeiture under I.C. 35-33-8-3.1 are needed as well. In many counties, the person posting the cash deposit is not informed that the 10% deposit will be forfeited even if the defendant appears at trial. A few courts have adopted a policy, without statutory authority, of requiring that cash deposits be made in the name of the defendant. Our recommendations regarding cash deposit bail forfeiture are contained in Appendix A, section (D).

Table 1 shows the revenues collected in the county supplemental public defender fund in 1991 and 1992 by some of the counties that use these statutes.

TABLE 1**AMOUNTS COLLECTED UNDER I.C. 33-9-11.5**

COUNTY	1991 COLLECTIONS	1992 COLLECTIONS
ALLEN	\$22,751.00	\$14,891.00
LAKE	44,529.53	54,010.50
MARION	375.00	4,620.00
MONROE	2,218.00	2,362.00
ST. JOSEPH	31,442.25	22,312.00
TIPPECANOE	660.00	1,093.00
VANDERBURGH	7,596.00	7,947.50

D. Standards for Appointment of Counsel

Any attorney licensed to practice law in Indiana may be appointed as counsel for the accused in a non-capital case. The only requirement is that they pass the "foggy mirror" test. Some judges appoint attorneys who have never tried a case and have no criminal law experience to represent a person charged with a serious felony offense. Occasionally, public defenders are hired right out of law school. Although this is not uncommon in other states, the problem in Indiana is that most public defenders receive no direct training or supervision. The people who pay the price for this practice are the clients.

We recommend that this court establish minimum experience requirements for attorneys for appointment as counsel to indigent persons. Our recommendations are contained in sections (E) and (F) of proposed Criminal Rule 26 in Appendix A.

E. Funding and Compensation

Based upon the number of indigent defense cases in Indiana and the total county expenditures for indigent defense services, we believe that the funding for defense representation is inadequate to provide effective assistance of counsel to people who must rely on court-appointed counsel to protect their constitutional rights. In 1991, there were approximately

95,000 felony, misdemeanor, and juvenile delinquency cases involving indigent defendants in Indiana. This estimate is based upon the number of cases filed and the average indigence rate for all courts that responded to the survey conducted by the Council. See Appendix F.

Table 2 indicates the number of indigent cases in Indiana in 1991 using the statewide average for the rate of indigence in felony, misdemeanor and juvenile delinquency cases.

TABLE 2
ESTIMATED NUMBER OF INDIGENT CASES IN 1991

	CASES FILED	EST. INDIGENCE RATE	EST. NO. INDIGENT CASES
FELONY	41,590	70%	29,113
MISDEMEANOR	193,486	30%	58,046
JUVENILE	16,169	50%	8,085
TOTAL			95,244

In 1991, the 92 counties collectively spent approximately \$13 million for indigent defense services for trial and appeal. Table 3 contains a summary of county expenditures for indigent defense services from 1986-1991 based upon the three categories of expenditures reported in the Indiana Judicial Reports prepared by the office of the State Court Administrator.

TABLE 3
COUNTY EXPENDITURES FOR INDIGENT DEFENSE SERVICES: 1986 - 1991

	PUBLIC DEFENDER AND STAFF	ASSIGNED COUNSEL - CASE BY CASE	OTHER INDIGENT EXPENSES	TOTAL COSTS
1986	\$4,353,928	\$2,409,868	\$ 393,253	\$ 7,157,049
1987	4,654,355	2,753,739	501,272	7,909,366
1988	5,212,531	3,018,486	658,888	8,889,905
1989	5,845,939	3,419,796	729,261	9,994,996
1990	6,291,652	4,431,170	737,061	11,459,883
1991	6,483,076	5,448,133	1,034,344	12,965,553

We estimate that, of the approximately \$13 million spent by the counties for indigent defense services in 1991, approximately \$2 million was spent for appellate representation. This means that the total amount spent by the 92 counties for defense representation at trial in 95,000 cases was \$11 million, or \$116 per case.

Although the county expenditures are not broken down by type of offense, we can get some idea of the compensation received per case by salaried and contractual public defenders based upon their caseloads. In the 14 counties with a population over 100,000, the average part-time public defender handling Class C felonies and above is paid \$21,000 per year and receives 70 new cases a year, which means they are paid \$300 per case. Part-time public defenders in these same counties handling misdemeanor cases receive an average of 400 new cases per year, which amounts to \$52.50 per case.

This level of pay per case should raise grave concerns about the quality of services provided in Indiana. However, the impact of inadequate compensation on the quality of representation is of even greater concern when the services are provided by part-time, salaried and contractual public defenders with unlimited caseloads. Part-time public defenders in

counties with heavy caseloads are compelled to find ways to reduce the time they spend per public defender case if they are to economically survive in private practice. Obviously there is no economic incentive to spend discretionary time on a public defender case rather than a fee paying private case. This results in a qualitative difference in the way private clients and public defender clients are treated. For example, in Marion County many part-time public defenders in the Superior Court, Criminal Division, rarely visit their clients in jail and refuse to accept collect calls from the clients which is the only way a person in jail can use the telephone. Since these attorneys also have little or no support staff, the result is minimal contact between client and attorney and, all too often, inadequate investigation and preparation.

Problems also exist with the compensation paid to counsel appointed on a case-by-case basis. As indicated in Appendix E, the hourly rates paid to assigned counsel in Indiana range from \$30 - \$70 per hour, with the majority of counties using a rate of \$40 for out-of-court time and \$50 for in-court time. For many attorneys, this rate barely covers the office overhead.

We believe that the compensation paid to public defenders and assigned counsel is grossly inadequate and is a serious impediment to quality representation. There are two approaches we recommend for improving compensation: (1) state funding; and (2) a mandatory court rule containing minimum standards for compensation.

The burden of paying for the costs of indigent defense was placed upon the counties in Webb v. Baird, *supra*. Subsequent legislative inaction has left this financial burden on the counties. Only eight other states rely solely on county funding for defense services at trial, and only fourteen other states require counties to pay the entire costs of defense representation for direct appeals.

The state currently pays approximately \$20 million for judges' salaries and \$9.8 million for prosecutors' salaries each year from the state general fund, yet contributes nothing for defense services except for \$650,000 per year for capital cases. We believe the state should assist the counties in paying the costs of defense services in all cases to protect the right to counsel that is guaranteed by the state constitution.

Although we are hopeful that the General Assembly will enact S.B. 600 and provide at least 25% state funding for indigent defense services in non-capital cases, this legislation will not prevent inadequate funding for indigent defense services by counties. Factors such as

increases in the number of cases filed, increases in the rate of indigence, rising costs, and limited revenue sources for counties will increase the challenge of obtaining adequate funding from counties for indigent defense services. In addition, the political reality is that indigent defense services are not popular among voters or local elected officials. There is no perceived political mileage to be gained by adequately funding indigent defense services. It does not translate into more votes on election day or public appreciation.

We have no reason to believe that funding for indigent defense services or compensation for counsel will be substantially increased unless this court requires adequate compensation. Thus, we recommend that this court adopt a mandatory rule containing minimum standards for compensation for public defenders and assigned counsel.

F. Caseload/Workload Standards

The problem of excessive caseloads are not unique to Indiana. In an attempt to cope with the problem of excessive caseloads, ten states have established maximum caseload standards by statute or court rule. See Appendix G. All but one of these states have adopted caseload standards similar to the national caseload standards first formulated in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). In Standard 13.12, the NAC recommended the following maximum number of cases per year for a full-time public defender working in an office with support staff:

Felony	not more than 150
Misdemeanor	not more than 400
Juvenile	not more than 200
Mental Health	not more than 200
Appeals	not more than 25

The NAC caseload standards have subsequently been endorsed by the National Legal Aid and Defender Association and by the House of Delegates of the American Bar Association in July of 1985, and are used extensively throughout the country by evaluators, public defender managers, and funding sources. However, these standards have been criticized in recent years

for being too high. In the report of the ABA's Special Committee on Criminal Justice in a Free Society, "Criminal Justice in Crisis," published in November of 1988, the committee emphasized the assumptions underlying these recommended caseload standards:

Emphasis should be placed on the fact that these guidelines set the maximum conceivable caseload that an attorney could reasonably manage. These numbers are unrealistic in the absence of ideal support conditions or if the attorney is carrying any number of serious or complex cases or death penalty cases.

Id., at p. 43, fn. 87.

The Council is currently compiling information on the caseloads of salaried and contractual public defenders and will submit a supplemental report if the court desires. We already know, however, that in many of the counties that use public defenders or a fixed fee contract, the caseloads are clearly excessive. In Lake County, some of the part-time public defenders in the Superior Court, Criminal Division, reported that they received over 100 new felony cases in 1992. In Marion County, the full-time public defenders in the Municipal Court Public Defender Office received an average of over 1,000 new misdemeanor cases in 1991.

Excessive caseloads also exist in counties considered to have a better than average public defender system. For example, in Monroe County, which has a public defender office with full-time attorneys, the caseload has increased 100% in the past five years without a corresponding increase in the number of attorneys. In St. Joseph County, the eleven part-time felony public defenders received an average of 73 new cases each in 1992, and the two part-time misdemeanor public defenders received 4,460 appointments in 1992.

We believe that it is necessary that maximum caseload/workload standards be established in Indiana for both full-time and part-time public defenders to avoid excessive caseloads. There are three methods used by defender programs around the country to develop caseload or workload limits: (1) the unit or case-based method; (2) the time-based method; and (3) the number of open files method. These methods are discussed in detail in a 1992 publication by the National Legal Aid and Defender Association entitled "Indigent Defense Caseloads and Common Sense: An Update," which will be made available to this court upon request.

We believe that the best method of setting caseload/workload standards is the time-based

system. This method requires a thorough time-study of public defenders to determine the average number of hours spent on the types of offenses comprising public defender's caseloads. In the past few years, time-studies have been conducted in Minnesota, Ohio, Wisconsin, California, and New York. Although this method is expensive and time-consuming, and would be difficult to do in Indiana because few, if any, public defenders keep time records, we believe that public defenders would willingly participate in such a study if requested to do so by this court.

In the alternative, we recommend using the case-based approach, which was used by all but one of the states listed in Appendix G. If the NAC caseload standards are used in Indiana as a starting point, an adjustment should be made to take into account two critical factors: (1) the types of cases; and (2) the lack of support services available to most public defenders. The NAC caseload standard for felonies is based on the assumption the attorney handles the full range of felonies within the jurisdiction, including a sizable percentage of the lowest level felonies. In Indiana, because of the jurisdiction of the courts, most felony public defenders do not handle Class D felonies. Thus, if the NAC Standards are used as a reference, a downward adjustment should be made because the average felony public defender in Indiana handles only Class C felonies and above.

In order to assist this court in determining what caseload standards to adopt, if any, we offer recommendations in Table 4 as to the maximum number of new cases that a public defender operating under the present circumstances with little or no support services should be expected to accept in a year.

TABLE 4
CASELOAD RECOMMENDATIONS

Type of Case	Full Time	Part Time (50%)
Capital	2	1
Murder	10	5
Class A felony	30	15
Class B & C felony	60	30
Class B & C with Habitual Offender	50	25
Class D felony	120	60
Misdemeanor	200	100
Juvenile delinquency	120	60
Probation violation	120	60
Mental health	120	60

In an attempt to weight cases by severity of offense, we made an assumption that the public defender would handle only one type of case. For example, if a full-time defender handles only Class A felonies, he or she should be assigned no more than 30 cases per year. We recognize that this method of setting caseload/workload standards will not work in the real world of a public defender's mixed caseload. However, it may be helpful to this court or the Public Defender Commission in developing a case-weighted formula. Thus, our recommendations are offered for the purpose of conveying our opinion as to the comparative values that should be given to types of cases that comprise a public defenders's caseload in Indiana.

Although the adoption of caseload/workload standards would be helpful, we believe that maximum caseload standards alone will not prevent excessive caseloads from occurring in Indiana unless there is an effective remedy and sanction for non-compliance. One method for preventing excessive caseloads that is being used more frequently in other states is the refusal of public defenders to accept additional cases. This type of action has occasionally resulted in the granting of relief. In re Order on Prosecution of Criminal Appeals by the Judicial Circuit Public Defender (Fla. 1990), 561 So.2d 1130; State v. Smith (Ariz. 1984), 681 P.2d 1374; and Ligda v. Superior Court of Solano County (Cal. 1970), 5 Cal. App. 3d 818. However, in

several instances (e.g., Tennessee, Oklahoma, Louisiana, Kentucky), public defenders have been held in contempt of court for refusing to accept any more cases.

Because public defenders in Indiana are currently at-will employees of the judges, it is not surprising that we have not experienced any examples of refusals by public defenders to accept cases in excess of what they feel that they can handle. Those who want to keep their jobs simply complain and accept the cases; those who get too frustrated by the excessive caseload quit.

Even if public defenders in Indiana were removed from the employment of judges, the refusal to accept appointments would probably not be politically acceptable unless it were specifically sanctioned by this court. Thus, we recommend in section (L) of Appendix A that judges be prohibited from appointing a salaried or contractual public defender to a case if the appointment would exceed the caseload standards, and that public defenders receiving an appointment in excess of the caseload standards be required to report the appointment to the appointing judge and the Public Defender Commission. These recommendations are consistent with the recommendations in Standard 5.3(b) of the ABA Standards for Criminal Justice, Chapter 5: Providing Defense Services (3rd Ed. 1990):

Whenever defender organizations, individual defenders, or assigned counsel or contractors for services determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organization, individual defender, or assigned counsel or contractor for services must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept workloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.

Although not specifically addressed in our proposed Criminal Rule 26, we also recommend that this court create a remedy for a defendant whose public defender's caseload exceeds the maximum caseload standards. In Indiana, there is currently no effective remedy for a defendant to prevent the harm before it occurs. The normal appellate review for ineffective assistance of

counsel is neither an expeditious nor an effective remedy. We believe an absolute right, which is enforceable through a mandate action to this court, is needed.

We recommend that this court create a prophylactic remedy for preventing excessive caseloads by adopting a court rule requiring trial courts to appoint other counsel within a specified time period (e.g., 10 days) upon a showing that the attorney's caseload exceeds the caseload standards. Upon the denial of a motion to appoint other counsel, the defendant should be entitled to petition this court for a writ of mandamus or prohibition compelling the trial court to appoint other counsel.

Although this remedy would help to prevent many of the excessive caseload problems, we think that a sanction for chronic underfunding of indigent defense services is also needed. The problem of inadequate funding for defense services has been the subject of several decisions of the Florida Supreme Court in the past few years. In In re Order on Prosecution of Criminal Appeals by the Judicial Circuit Public Defender (Fla. 1990), 561 So.2d 1130, the backlog of appeals was so great that it took appellate public defenders two years before they could start working on a case. The court gave the legislature 60 days to increase funding or the court would start releasing prisoners with bailable offenses. Defendants with non-bailable offenses were authorized to file a petition for writ of mandamus to compel the appointment of other counsel to handle their appeals. It worked - funding increased within 60 days.

We recommend that this court consider imposing a similar remedy for defendants, i.e., release from custody or dismissal of the charges. The detention of a person whose constitutional rights are being ignored or violated cannot be justified. Thus, requiring that the accused person be released from custody would at least prevent unjust, prolonged pretrial confinement. However, it would not prevent the accused from being subjected to an unfair trial with an overloaded and unprepared lawyer.

The most effective remedy to prevent habitual non-compliance with this court's caseload standards would be the mandatory dismissal of the charges against the accused. The advantage of this remedy is that it attaches a political cost to the refusal to adequately fund indigent defense services, quite possibly the only thing that will motivate adequate funding. Releasing persons accused of crimes would be an effective way of turning up the political heat to motivate county councilors to appropriate adequate funds for this constitutionally mandated service.

To prevent excessive caseloads resulting from the use of fixed price contracts and to avoid competitive bidding and the awarding of contracts based solely on cost, we also recommend that this court adopt a rule requiring that contracts under I.C. 33-9-10 must be consistent with the recommended elements of a contract for services contained in Standard 5-3.3(b) of the ABA Standards for Criminal Justice, Chapter 5: Providing Defense Services (3rd Ed. 1990):

- (b) Contracts for services should include, but not be limited to, the following subjects:
 - (i) the categories of cases in which the contractor is to provide services;
 - (ii) the term of the contract and the responsibility of the contractor for completion of cases undertaken within the contract term;
 - (iii) the basis and method for determining eligibility of persons served by the contract, consistent with standard 5-7.1;
 - (iv) identification of attorneys who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval;
 - (v) allowable workloads for individual attorneys, and measures to address excessive workloads, consistent with standard 5-5.3;
 - (vi) minimum levels of experience and specific qualification standards for contracting attorneys, including special provisions for complex matters such as capital cases;
 - (vii) a policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses;
 - (viii) limitations on the practice of law outside of the contract by the contractor;
 - (ix) reasonable compensation levels and a designated method of payment;
 - (x) sufficient support services and reasonable expenses for investigative services, expert witnesses and other litigation expenses;
 - (xi) supervision, evaluation, training and professional development;
 - (xii) provision of or access to an appropriate library;
 - (xiii) protection of client confidences, attorney-client information and work product related to contract cases;

(xiv) a system of case management and reporting;

(xv) the grounds for termination of the contract by the parties.

VIII. CONCLUSIONS

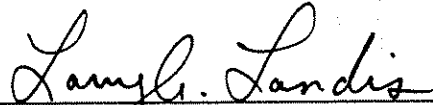
There are serious problems with indigent defense services in Indiana that require the attention of this court, the General Assembly, the Governor, trial court judges, county officials, the organized bar, and the attorneys who provide these services.

Although it is easy to see the deficiencies in the present systems, there are no easy solutions or quick fixes. The effectiveness of any method or system rests on the dedication and ability of the lawyers (public defenders and private attorneys) providing the representation. Fortunately, many exceptional attorneys continue to represent indigent defendants in Indiana, but excessive caseloads, low fees and salaries, lack of essential support services, and lack of independence from the judiciary are driving away more and more of these dedicated attorneys.

In order to attract and keep good lawyers in indigent defense, it will be necessary to provide these lawyers with independence, adequate compensation, adequate support services, and protection against excessive caseloads. We are convinced that the necessary changes will not occur unless this court adopts a mandatory court rule for indigent defense services.

The board, staff, and members of the Council are ready and willing to assist this Court in fulfilling the promise of "equal justice for all" by improving indigent defense services in Indiana.

Respectfully submitted,



Larry A. Landis

Executive Director

Indiana Public Defender Council

APPENDIX A

PROPOSED CRIMINAL RULE 26. INDIGENT DEFENSE SERVICES

- (A) **Public Defender Boards.** In any county that has not adopted an ordinance creating a county public defender board under I.C. 33-9-15-3 or I.C. 33-1-3, the judges exercising criminal or juvenile jurisdiction shall establish by joint court order a county public defender board consistent with the ABA Standards for Criminal Justice, Chapter 5: Providing Defense Services (3rd Ed. 1990), and having the same duties and powers provided in I.C. 33-9-15.
- (B) **Standards for Determining Eligibility.** In all cases where the right to counsel has been established, counsel shall be provided to persons who are financially unable to retain private counsel without substantial hardship to themselves or to persons financially reliant upon them. Counsel should not be denied to any person merely because the person is able to obtain pretrial release through a surety bond, property bond, or a cash deposit. The fact that a person is released pretrial and is employed shall not be determinative of the person's ability to employ private counsel.
- (1) *Factors to be Considered.* In determining whether a person is indigent and eligible for appointed counsel at public expense, the court shall estimate the costs of retaining private counsel and determine whether the person's disposable income and assets can be readily converted to cash are adequate to cover the costs of retaining private counsel. In determining the costs of retaining private counsel, the court shall consider the nature of the criminal charge, the anticipated complexity of the defense, the estimated cost of presenting a legal defense, and the fees charged by lawyers in the community for providing defense services in similar cases.
- (a) Disposable Income. Disposable income includes all income before taxes of the accused less expenses.
- (b) Expenses. The accused's expenses includes all living expenses, expenses incurred to produce income, taxes, periodic payments on fixed debts and obligations, including: food; utilities; housing; child support and alimony obligations; education or employment expenses; child care; medical expenses; and transportation.
- (c) Assets. Equity in real and personal property exceeding the statutory allowances in I.C. 34-2-28-1, which can be readily converted to cash, shall be considered as assets available to the accused for purposes of determining the accused's ability to retain counsel.
- (2) *Early Determination.* An accused's eligibility for counsel appointed at public expense shall be resolved at the earliest possible stage of the proceedings.
- (3) *Judicial Determination.* The determination as to whether a person is indigent and entitled to have counsel appointed at public expense is a judicial function that may not

be delegated to a non-judicial officer. Interviewing and screening for eligibility may be done by a person other than a judge.

- (4) *Non-Judicial Screening and Judicial Review.* If interviewing and screening for eligibility is done by a person other than a judge, a judge shall conduct a prompt judicial review of a recommendation of non-eligibility which shall be held no later than the initial hearing. If the eligibility screening is done by a person or agency other than a judge, confidentiality shall be maintained.

(C) Payment by Accused of Defense Costs.

- (1) *Advisement to the Accused.* If the accused requests appointed counsel, the judge shall inform the accused that under I.C. 33-9-11.5:

- (a) the court may order the accused at any stage of the prosecution to pay the actual costs of defense services provided;
- (b) the accused has a right to an evidentiary hearing as to costs imposed and the extent of the burden that such an order would impose on the accused;
- (c) the failure to comply with the order to pay defense costs could result in the revocation of probation if the failure to pay is determined to be a wilful refusal to pay; and
- (d) the order to pay the costs of the defense services provided is a civil judgment by the county against the accused.

(2) *Amount of Repayment Order*

- (a) Prior to entering an order requiring the accused to pay the costs of defense services under I.C. 33-9-11.5, the court shall make an individualized determination that the accused is presently able to pay the costs of defense services.
- (b) An order requiring an indigent person to pay the costs of defense services shall be supported by documentation of actual costs paid by the county for defense services.

- (D) Forfeiture of Cash Deposit Bail.** Prior to ordering forfeiture of cash deposited for bail pursuant to I.C. 35-33-8-3(b), a judge shall conduct a hearing to determine the source of the cash deposited for bail. If the judge finds that the source of the cash is someone other than the accused, the judge shall not order forfeiture. If the judge finds that the cash belongs to the accused, the court shall determine whether the forfeiture would cause a substantial hardship to the accused or persons that are financially reliant upon the accused.

- (E) Appointment of Trial Counsel.** Upon a finding that the accused is eligible for the appointment of counsel at trial, a judge shall enter an order appointing the public defender office or specifically naming a qualified attorney to represent the accused. In addition to the following qualifications for appointment, an attorney shall have completed within twelve (12) months of the appointment at least six (6) hours of continuing legal education in criminal or juvenile law.

- (1) *Murder; Qualifications.* To be eligible to serve as appointed counsel in a case where the accused is charged with murder, an attorney shall:
 - (a) be an experienced and active trial practitioner with at least three (3) years of criminal litigation experience;
 - (b) have prior experience as lead or co-counsel in no fewer than three (3) felony jury trials which were tried to completion; and
 - (c) have prior experience as lead or co-counsel in at least one (1) murder case.
 - (2) *Class A, B or C Felony; Qualifications.* To be eligible to serve as appointed counsel in a case where the accused is charged with a Class A, B, or C felony, an attorney shall:
 - (a) be an experienced and active trial practitioner with at least two (2) years of criminal litigation experience; and
 - (b) have prior experience as lead co-counsel in no fewer than (2) felony jury trials which were tried to completion.
 - (3) *Counsel, Class D Felony - Qualifications.* To be eligible to serve as appointed counsel in a case where the accused is charged with a Class D felony, an attorney shall:
 - (a) be an experienced and active trial practitioner with at least one (1) year of criminal litigation experience; and
 - (b) have prior experience as lead or co-counsel in at least one (1) criminal jury trial which was tried to completion.
 - (4) *Other cases - Qualifications.* To be eligible to serve as appointed counsel in all other cases where a person is entitled to appointed counsel, an attorney shall:
 - (a) have prior experience as lead or co-counsel in at least one (1) case of the same type which was tried to completion.
- (F) Appointment of Appellate Counsel.** Upon a finding that the accused is eligible for the appointment of counsel on appeal and the accused has expressed a desire for an appeal, the judge shall enter a written order appointing the county public defender office or specifically naming a qualified attorney to represent the accused on appeal.
- (1) *Qualifications of Appellate Counsel.* An attorney appointed to serve as appellate counsel, shall:
 - (a) be an experienced and active trial or appellate practitioner with at least three (3) years experience in criminal litigation;
 - (b) have fully briefed as appellate counsel at least one (1) felony conviction in federal or state court; and

- (c) have completed within the prior year at least six (6) hours of continuing legal education in criminal or juvenile law.
- (G) Compensation of Salaried or Contractual Public Defenders.** The salaries and contract amounts under I.C. 33-9-10 for public defenders shall be set in accordance with the compensation standards adopted by the Public Defender Commission.
- (H) Compensation of Assigned Counsel.** Counsel appointed on a case-by-case basis for trial or appeal shall submit a claim for services and reimbursement for expenses on a form approved by the Public Defender Commission, which shall contain the activity, date performed, and time spent. Counsel shall be compensated upon presentment and approval of the claim by the appointing authority.
- (1) *Hours and Hourly Rate.* Counsel shall be compensated for hours actually expended at the hourly rate of sixty dollars (\$60.00).
 - (2) *Periodic Payments.* Period payment during the course of counsel's representation shall be made monthly upon request of appointed counsel.
 - (3) *Support Services and Incidental Expenses.* Counsel shall be provided with adequate funds for investigative, expert, and other services necessary to provide effective representation, and shall be reimbursed for reasonable, incidental expenses.
- (I) Court Authorized Expenditures for Non-indigents.** A judge may authorize funds for investigative, expert, or other services for a defendant who has retained private counsel but is unable to pay for other services that are necessary to prepare and present an adequate defense.
- (J) Ex Parte Application For Funds.** A request for funds for investigative, expert, or other services necessary to provide an effective representation shall be made ex parte, and any hearing thereon shall be in camera.
- (K) Workload of Assigned Counsel.** Attorneys accepting appointments as assigned counsel shall provide each client with quality representation in accordance with constitutional and professional standards.
- (1) Assigned counsel shall not accept an appointment that will result in the breach of constitutional or professional standards.
 - (2) A judge shall not appoint assigned counsel if the attorney has indicated that the attorney will not be able to meet constitutional and professional standards.

(L) Workload of Public Defenders.

- (1) Salaried or contractual public defenders shall not be appointed as trial or appellate counsel in a case if the appointment would exceed the caseload standards adopted by the court or body designated by the court. If a salaried or contractual public defender receives an appointment of a case in excess of the caseload standards, the public defender shall report the assignment to the appointing judge and the Public Defender Commission.
- (2) If the appointment to the public defender office exceeds the caseload standards adopted by the court or body designated by the court, the chief public defender shall inform the judge that the caseload standards would be exceeded by the appointment and the judge shall appoint an assigned counsel.

APPENDIX B

APPENDIX B

STATEWIDE INDIGENT DEFENSE SYSTEMS (updated 10/92)

<u>State/Type of Program</u>	<u>Commission</u>	<u>Commission Duties and Responsibilities</u>	<u>Public Defender - How Selected/Term/Qualifications</u>	<u>Public Defender Duties/Responsibilities</u>
ALASKA State Public Defender Agency (Executive Agency, Dept. of Admin.)	None		<ul style="list-style-type: none"> -Apptd. by Gov. from nominations of judicial council. -Confirmed by majority of legislature in joint sitting. -4 yr. term; renewal requires legislative confirmation. -Member of bar. -Gov. can remove for good cause. 	<ul style="list-style-type: none"> -Full-time. -No private practice. -Appt., supervise & control asst. PDs & other employees. -Submit annual report to legislature & Supreme Ct. on number & types of cases, dispositions & expenditures.
ALASKA Office of Public Advocacy (Executive Agency, Dept. of Admin.)	None		<ul style="list-style-type: none"> -Public Advocate. -Apptd. by Gov. -Serves at will of Gov. 	<ul style="list-style-type: none"> -Provides Guardian Ad Litem for abused & neglected children & status offenders -Provides representation in conflict cases from the Alaska PD Agency. -Acts as Public Guardian & conservator for citizens w/ disabilities.

State/Type of Program

COLORADO
Office of State Public
Defender
(Agency of Judicial
Dept.)

Commission

- Five members.
- No more than 3 from same political party.
- 3 attys/2 non-attorneys.
- No judges, prosecutors, PD's or law enforcement personnel.
- Appointment procedures & term to be established by Supreme Court.

Commission Duties and Responsibilities

- Supreme Ct. shall provide for apptment, terms & procedures.
- Appt. PD & discharge for cause.

Public Defender - How Selected/Term/Qualifications

- Apptd. by Commission.
- 5 yr. term/renewable.
- Member of bar 5 yrs. prior to apptmnt.
- Fulltime position.

Public Defender Duties/Responsibilities

- Employ & set compensation for all employees.
- Payments approved by S. Ct.
- Establish such regional offices as necessary.

CONNECTICUT

Public Defender Services
Commission
(Autonomous body within judicial dept. for fiscal & budgetary purposes only.)

Adopt rules for division of public defender.

- Establish a compensation plan comparable to state's attorney's.
- Establish employment standards.
- Appoint Chief PD & Deputy Chief PD.
- Remove PD & Deputy PD for cause following notice & hearing.
- Submit annual report to Chief Justice, Gov. & legislature by Oct. 15. (see duties of PD).

Seven members.

- 2 judges apptd. by Chief Justice.
- 1 member apptd. by each: Speaker of House, President Pro Tem of Senate, minority leader of House, minority leader of Senate.
- Chairman apptd. by Governor.
- Term: 3 years.
- No more than 3, other than chairman, from same party.
- 2 of 4 nonjudicial members non-attorneys.
- No PD's.

Apptd. by Commission

- 4 yr. term.
- Member of state bar for 5 yrs.
- Fulltime position.

- Direct & superv. work of all personnel.
- Submit annual report incl. data & recomms. for changes in law to commission by Sept. 15. (Note extensive list in Sec. 51-291)

<u>State/Type of Program</u>	<u>Commission</u>	<u>Commission Duties and Responsibilities</u>	<u>Public Defender - How Selected/Term/Qualifications</u>	<u>Public Defender Duties/Responsibilities</u>
DELAWARE Office of the Public Defender (Executive Agency)	None		-Apptd. by Gov. -6 yr. term. -Qualified atty. licensed in Delaware.	-Appt. asst. attys., clerks, investigators & other employees as necessary & set salaries. -Determine indigency prior to arraignment. -Make annual report.
DISTRICT OF COLUMBIA D.C. Public Defender Service (Independent Agency)	-11 member Board of Trustees. -Apptd. by panel of 2 U.S. judges, 2 D.C. judges & Mayor of D.C. -3 year term; not more than 2 consecutive. -No judges. -4 of 11 members non-attorney residents of D.C.	-Establish gen. policy but shall not direct conduct of particular cases. -Submit fiscal yr. report to Congress, chief judges of U.S. Cts. & D.C. Cts. & D.C. Mayor. -Arrange annual independent audit. -Quarterly reports to ct. on matters relating to appointment sys. -Appoint Director & Deputy Director & set their salaries.	-Apptd. by Trustees -Serve at pleasure of Trustees. -Member of D.C. bar. -No private practice.	-Supervise work. -Employ personnel. -Fix compensation not to exceed salary paid to U.S. Attys. & staff.

<u>State/Type of Program</u>	<u>Commission</u>	<u>Commission Duties and Responsibilities</u>	<u>Public Defender - How Selected/Term/Qualifications</u>	<u>Public Defender Duties/Responsibilities</u>
HAWAII Office of State Public Defender (Executive Agency, Dept. of Budget & Finance)	-5 member Defender Council. -Apptd. by Governor. -Serve at Governor's pleasure. -One member from each county. -Chairman selected by members.	-Council shall be governing body of Office of State PD. -Shall appoint PD. -Approve employment decisions of PD.	-Appointed by Council. -4 yr. term. -Qualified to practice law in Hawaii. -Fulltime position.	-Subject to approval of Council; employ asst. PD's, investigators & other support personnel. -Asst. PD's may be parttime & engage in priv. practice other than crim. law.
KENTUCKY Dept. of Public Advocacy (Local option system) (Independent State Agency)	-9+ (Deans of law schools). -4-year term. -2 members apptd. by Gov.; 1 by speaker; 1 by Pres. of Senate; 2 by Supreme Ct.; 2 crim. lawyers apptd. by Gov. from list of 5 submitted by Bar Assn., 1 apptd. by Gov. from list submitted by KY Protection and Advocacy Advisory Bd. -No prosecutors or law enforcement officials. -Chair elected by Commission to 1-year term. -Also a 17-member citizen advisory bd. apptd. by the Public Advocate.	-Recommend to Gov. 3 attys. as nominees for Public Advocate (PA). -Assist PA selecting staff. -Provide gen. superv. of PA & review performance. -Engage in public educ. & generate political support. -Review & adopt annual budget. -Not interfere w/ handling of cases.	-Public Advocate apptd. by Gov. from nominees submitted by Commission. -Member of Kentucky Bar w/ 5 yrs. exper. -4 yr. term.	-Appt. Deputy PA. -Appt. asst. PA's & other personnel. -Serve as ex officio, non-voting member of Commission. -Appt. 17 member Advisory Bd. for Protection & Advocacy Div.

<u>State/Type of Program</u>	<u>Commission</u>	<u>Commission Duties and Responsibilities</u>	<u>Public Defender - How Selected/Term/Qualifications</u>	<u>Public Defender Duties/Responsibilities</u>
MARYLAND Office of Public Defender (Executive Agency)	-3 member board of Trustees; 2 active attorneys. -Apptd. by Governor. -3 year term. -Chair designated annually by Trustees.	-Study & observe operation of PD office. -Coord. activities of district Advisory Bds. -Appt. PD. -Advise PD on all relevant matters.	-Apptd. by Bd. of Trustees. -Term is at pleasure of Trustees. -Atty. admitted in Maryland + 5 yrs. in practice.	-Appt. Deputy PD w/ Bd. approval. -Appt. 1 Distr. Defender in ea. judicial distr. -Appt. asst. PDs w/ advice of Distr. Defenders. -Appt. other employees. -Maint. at least 1 office in ea. distr. -Gen. responsibility for operation of all offices. -Maint. records. -Superv. distr. defenders' maint. of local panels of attys.
MASSACHUSETTS Committee for Public Counsel Services (Independent Agency)	-15 members. -Apptd. by Justices of Supreme Judicial Court. -3-year term. -Chair elected by the Committee.	-Establ. standards for public counsel & priv. counsel div. -Establ. uniform standards of indigency. -Establ. guidelines for training & for qualification & removal of counsel in public & priv. div. -Prepare annual report. -Appt. chief counsel & 2 deputies. -Extensive list of other duties & responsibilities enumerated by Statute.	<u>Chief Counsel</u> -Apptd. by Committee. -Atty. -Serves at pleasure of Committee.	-Overall superv. of various divisions of committee. -Perform duties as defined by the committee. -Authorize all payments certified by judges for priv. counsel.

State/Type of Program

MINNESOTA
State Board of Public
Defenders
(Separate agency within
judicial branch)

Commission

7 members:
-1 district ct. judge
apptd. by Supreme Ct.
-4 attys. familiar with
criminal law but not
employed as prosecutors,
apptd. by Supreme Ct.
-2 public members
apptd. by Governor.
Plus: 11 members on ad
hoc board.

Commission Duties and
Responsibilities

-Appt. State PD.
-Prepare annual report.
-Recommend budget for
Bd., Office of State PD
& public defense corps.
-Establ. procedures for
distribution of funds for
public defense.
-Set standards for state
& distr. PDs & ct.-
apptd. sys.

Public Defender - How
Selected/Term/Qualifi-
cations

State PD under superv.
of State Bd. of Public
Defense. Apptd. by Bd.
to 4 yr. term.

Public Defender
Duties/Responsibilities

MISSOURI
Office of State Public
Defender
(Independent Dept. in
Judicial Branch)

Public Defender
Commission:
-7 members/4 lawyers;
no more than 4 from
same party.
-Apptd. by Governor
with advice & consent of
Senate.
-6-year term.
-State PD is ex-officio
member without vote.
-Chair elected by
members.

Select director, deputies
& all PDs.
-Establ. employment
procedures.
-Review office
performance & monitor
director.
-Public educ. to insure
independence of sys.
-Advise on budgetary
matters.
-Contract w/ priv. attys.
-Approve fee sched. for
assigned counsel.

Director:
-Apptd. by commission.
-4 yr. term.
-Atty. w/ substantial
crim. law exper., also
exper. in personal
admin.

-Admin. & coord.
operation.
-Direct & superv. work
of employees.
-Submit annual report &
budget to commission.
-Superv. training.
-Contract out for legal
services w/ approval of
commission.

<u>State/Type of Program</u>	<u>Commission</u>	<u>Commission Duties and Responsibilities</u>	<u>Public Defender - How Selected/Term/Qualifications</u>	<u>Public Defender Duties/Responsibilities</u>
NEW HAMPSHIRE Public Defender Program (Private non-profit corporation under contract with judicial council)	State-level Judicial Council: -15 members - 1 from ea. ct. level: Supr., Superior, Distr., Probate. -Atty. Gen. ex officio. -Pres. & VP of NH Bar Assn. ex officio. -Representative from Superior Ct. Clerks. -7 apptd. by the Gov. -4 must be attys.	Judicial Council: -Contract w/ local PD corps. & individ. attys. for provision of defense services. -Gen. superv. of programs in re: allocation of cases betw. PD progr. & assigned counsel; performance of counsel; competence of counsel; fiscal & budgetary matters.	-PD is apptd. by Corp. Bd. & serves at its pleasure.	-Specific responsibilities are contained in contract w/ judicial council.
NEW JERSEY Office of the Public Defender (Executive Agency, Part of Div. of the Public Advocate)	None		-Apptd. by Gov. w/ advice & consent of Senate. -5 yr. term. -Atty. - exper. in practice in NJ.	-Appt. Deputy & Asst. PDs. -Appt. support personnel. -Establ. offices. -Engage & compensate assigned counsel.
NEW MEXICO State Public Defender (Executive Dept.)	None		Apptd. by Gov. -Atty. active for 5 yrs. prior to apptmnt. & is exper. in defense or prosecution. -Serve at pleasure of Gov.	-Manage all operations of dept. -Set fee sched. for assigned counsel. -Establ. local PD districts. -Apptd. Distr. PD's who serve at his/her pleasure.

<u>State/Type of Program</u>	<u>Commission</u>	<u>Commission Duties and Responsibilities</u>	<u>Public Defender - How Selected/Term/Qualifications</u>	<u>Public Defender Duties/Responsibilities</u>
OKLAHOMA Oklahoma Indigent Defense System	-5 members for 5 yr. terms apptd. by Gov., subj. to advice & consent of Senate	-Makes policies for indigent defense programs. -Approve budget. -Appt. advisory council of indigent defense attys.	-Exec. Director. -Apptd. by bd. -Serves at pleasure of bd.	-Prepares sys. budget. -Keep list of priv. attys. for capital & non-capital case appointments. -Advisor to indigent defenders. -Act on system's behalf in legisl. efforts.
RHODE ISLAND Office of the Public Defender	None		-Apptd. by Gov. w/ advice & consent of Senate. -3 yr. term. -Atty. w/ 5 yrs. exper.	Appt. superv. & direct assistants as necessary.
TENNESSEE District Public Defender Conference (Executive Branch)	-31 members. -All elected District Public Defenders.	-Propose enactment of new laws & rules of procedure to improve PD sys. -Develop overall policy for operation of PD sys. statewide.	-Office of Exec. Secy. to Distr. PD Conference. -Elected by Conference for 8 yr. term.	-Assist distr. PDs to coord. their responsibilities. -Serve as liaison among various branches of state govt. -Prepare budgets for ea. distr. for submission to state. -Provide PDs w/ minimum law libraries.

<u>State/Type of Program</u>	<u>Commission</u>	<u>Commission Duties and Responsibilities</u>	<u>Public Defender - How Selected/Term/Qualifications</u>	<u>Public Defender Duties/Responsibilities</u>
VERMONT Office of the Defender General	None		-Apptd. by Gov. w/ advice & consent of Senate.	-Operates program thru PDs & Deputy PDs or by contracting out to priv. attys. -May establ. local offices headed by a PD. -Contract out to member of Bar to serve as assigned counsel coordinator.
WEST VIRGINIA State Public Defender Council (State Council: Independent)	State Council -16 members apptd. by Governor with advice & consent of Senate. -No more than 6 attorneys, no more than 6 non-attorneys, no state employees, no more than 9 from same party.	W. Virginia State Council: -Contract w/ PD corps. or other individ. or organizations for PD services; establ. auditing div. to audit & monitor local PD corps., etc. -Establ. appellate advocacy div. -Establ. crim. law research ctr. -Dev. new concepts for improving programs. -Eval. proposals of PD corps. to provide service. -Recommend improvements & review & compare alternative sys. for qual. & cost. -Establ. stds. of indigency.	(State) Exec. Dir. of Council: -Apptd. by Gov. -Serves at Gov.'s pleasure. -Shall be a qualified admin.	Exec. Dir. of State Council: -Broad grant of authority to effectuate purposes or statute as directed by council. -Hire employees of council as council determines are necessary. -Superv. & direct work of employees.

State/Type of Program

WISCONSIN
Office of the State
Public Defender
(Independent)

Commission

- 9 members apptd. by Gov., approved by Senate.
- At least 5 must be attorneys.
- 3 year term.
- Chair is elected by Board.

Commission Duties and Responsibilities

- Appt. state PD & establ. salary.
- Approve budget & submit to Gov.
- Promulgate standards of indigency.
- Promulgate rules for assignment of priv. counsel in re: standards, payments & pro bono programs.
- Perform all other duties necessary & incidental.
- Contract w/ fed. agencies & local PD organizations for provision of services.

Public Defender - How Selected/Term/Qualifications

- Apptd. by Bd.
- Member of Wisconsin Bar.
- 5 yr. term.

Public Defender Duties/Responsibilities

- Superv. operation of office of PD.
- Maint. data & submit biennial budget to bd.
- Make final decisions in re: specific cases.
- Delegate cases to any member of Wisconsin bar.
- Negotiate contracts out for representation as directed by Bd.
- Appt. staff.

WYOMING
State Public Defender
(Executive agency)

None

- PD in ea. distr. apptd. by Gov. upon recommendations from distr. judge & county commissioners.
- No term specified.
- Member of Wyoming Bar w/ exper. in defense or prosecution.
- Asst. PDs apptd. by Gov. & serve at pleasure of PD.
- PD may require them to be fulltime.

-Admin. PD program in district.

APPENDIX C

INDIGENT DEFENSE FUNDING SOURCE TRIAL

	STATE	COUNTY	BOTH	OTHER
ALABAMA	X			
ALASKA	X			
ARIZONA		X		
ARKANSAS		X		
CALIFORNIA			X	
COLORADO	X			
CONNECTICUT	X			
DELAWARE	X			
DISTRICT OF COLUMBIA				X
FLORIDA			X	
GEORGIA			X	
HAWAII	X			
IDAHO			X	
ILLINOIS			X	
INDIANA		X		
IOWA	X			
KANSAS			X	
KENTUCKY			X	
LOUISIANA				X
MAINE	X			
MARYLAND	X			
MASSACHUSETTS	X			
MICHIGAN		X		
MINNESOTA			X	
MISSISSIPPI		X		
MISSOURI	X			
MONTANA			X	
NEBRASKA		X		

	STATE	COUNTY	BOTH	OTHER
NEVADA			X	
NEW HAMPSHIRE	X			
NEW JERSEY	X			
NEW MEXICO	X			
NEW YORK			X	
NORTH CAROLINA	X			
NORTH DAKOTA			X	
OHIO			X	
OKLAHOMA	X			
OREGON	X			
PENNSYLVANIA		X		
RHODE ISLAND	X			
SOUTH CAROLINA			X	
SOUTH DAKOTA			X	
TENNESSEE			X	
TEXAS		X		
UTAH			X	
VERMONT	X			
VIRGINIA	X			
WASHINGTON		X		
WEST VIRGINIA	X			
WISCONSIN	X			
WYOMING			X	
TOTALS	22	9	18	2

APPENDIX D

INDIGENT DEFENSE FUNDING SOURCE APPELLATE

STATE	STATE FUNDS	COUNTY FUNDS	STATE/ COUNTY FUNDS	OTHER
ALABAMA	X			
ALASKA	X			
ARIZONA		X		
ARKANSAS		X		
CALIFORNIA	X			
COLORADO	X			
CONNECTICUT	X			
DELAWARE	X			
DISTRICT OF COLUMBIA				X
FLORIDA	X			
GEORGIA		X		
HAWAII	X			
IDAHO		X		
ILLINOIS	X			
INDIANA		X		
IOWA	X			
KANSAS	X			
KENTUCKY				X
LOUISIANA		X		
MAINE	X			
MARYLAND	X			
MASSACHUSETTS	X			
MICHIGAN	X			
MINNESOTA	X			
MISSISSIPPI		X		
MISSOURI	X			
MONTANA		X		

STATE	STATE FUNDS	COUNTY FUNDS	STATE/COUNTY FUNDS	OTHER
NEBRASKA		X		
NEVADA			X	
NEW HAMPSHIRE	X			
NEW JERSEY	X			
NEW MEXICO	X			
NEW YORK		X		
NORTH CAROLINA	X			
NORTH DAKOTA		X		
OHIO			X	
OKLAHOMA	X			
OREGON	X			
PENNSYLVANIA		X		
RHODE ISLAND	X			
SOUTH CAROLINA	X			
SOUTH DAKOTA		X		
TENNESSEE	X			
TEXAS		X		
UTAH		X		
VERMONT	X			
VIRGINIA	X			
WASHINGTON	X			
WEST VIRGINIA	X			
WISCONSIN	X			
WYOMING	X			
TOTALS	32	15	2	2

APPENDIX E

COURT REPORTERS ASSOCIATION OF FLORIDA

Superior 3										7	\$ 7007	10	\$50/\$50
Superior 4												5	\$45/\$45
LAWRENCE													
Circuit, Superior & County								3		\$23000		4	\$40/\$50
MADISON													
Circuit			3		\$16050/\$21050								
Unified Superior & County	5		8		\$10914/\$21828								
Probate								1		\$16588			
MARION													
Superior, Crim. Div.								5	\$20440		40	\$20440	
Superior, Probate								1	\$16588/\$16588				
Public Defender-Juv.	5		2										
Public Defender-Mun.	20		5										
Superior, Civ, IV-D													
MARSHALL													
Circuit											2	\$ 9036/\$11424	
Superior 1											1	\$22200/\$22200	
Superior 2								1	\$22200			2	\$40/\$45
MARTIN													
Circuit												4	\$50/\$50
MIAMI													
Circuit											2	\$22545	\$50/\$50

APPENDIX F

INDIGENCY RATES, INDIANA COURTS 1992

QCSR = Quarterly Case Status Reports to the State Court Administrator
 IPDC Survey = Survey conducted by the Indiana Public Defender Council in January, 1993
 NR = No Response
 INV= Invalid because number of indigent cases exceed total of all cases
 0.00% may mean space for indigent cases was left blank in survey or report

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
ADAMS	Adams Circuit	01C01	3	7%	27.45%	50%	6.67%	5%	2.04%
ADAMS	Adams Superior	01D01	1	47%	68.75%	53%	18.75%	0%	0.00%
ALLEN	Allen Circuit	02C01	4	76%	74.86%	15%	0.00%	0%	0.00%
ALLEN	Allen Superior	02D01	3	76%	45.54%	15%	13.56%	0%	0.00%
BARTHOLEMW	Bartholemew Circuit	03C01	4	70%	68.38%	0%	0.00%	85%	42.36%
BARTHOLEMW	Bartholemew Superior 1	03D01	4	80%	83.20%	70%	43.75%	0%	0.00%
BARTHOLEMW	Bartholemew Superior 2	03D02	3	50%	0.00%	30%	0.00%	0%	0.00%
BENTON	Benton Circuit	04C01	4	90%	69.77%	90%	28.57%	20%	25.00%
BLACKFORD	Blackford Circuit	05C01	4	NR	37.50%	NR	0.00%	NR	14.29%
BLACKFORD	Blackford County	05E01	4	18%	17.74%	16%	15.60%	0%	0.00%
BOONE	Boone Circuit	06C01	4	0%	0.00%	0%	0.00%	10%	39.19%
BOONE	Boone Superior 1	06D01	4	95%	58.70%	0%	0.00%	0%	0.00%
BOONE	Boone Superior 2	06D02	4	NR	Inv	NR	47.11%	NR	0.00%
BROWN	Brown Circuit	07C01	3	50%	35.21%	50%	15.48%	20%	36.84%
CARROLL	Carroll Circuit	08C01	4	40%	27.27%	0%	0.00%	0%	0.00%
CARROLL	Carroll Superior	08D01	4	25%	35.29%	15%	12.98%	20%	37.84%

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
CASS	Cass Circuit	09C01	4	65%	41.29%	0%	42.11%	99%	100.00%
CASS	Cass Superior	09D01	3	NR	50.54%	NR	6.72%	NR	0.00%
CLARK	Clark Circuit	10C01	4	90%	83.17%	0%	0.00%	0%	0.00%
CLARK	Clark Superior 1	10D01	4	55%	64.29%	0%	0.00%	25%	17.42%
CLARK	Clark Superior 2	10D02	4	75%	47.93%	0%	0.00%	0%	0.00%
CLARK	Clark County	10E01	4	50%	36.56%	25%	14.14%	0%	0.00%
CLAY	Clay Circuit	11C01	4	50%	44.44%	50%	16.67%	10%	15.07%
CLAY	Clay Superior	11D01	4	NR	34.62%	NR	22.17%	NR	0.00%
CLINTON	Clinton Circuit	12C01	4	NR	89.83%	NR	0.00%	NR	28.07%
CLINTON	Clinton Superior	12D01	4	15%	40.20%	15%	10.23%	0%	0.00%
CRAWFORD	Crawford Circuit	13C01	4	50%	35.34%	60%	14.10%	25%	13.04%
DAVIESS	Davie's Circuit	14C01	4	80%	52.08%	0%	40.00%	90%	15.38%
DAVIESS	Davie's Superior	14D01	4	25%	37.50%	25%	12.18%	0%	0.00%
DEARBORN	Dearborn Circuit	15C01	4	60%	41.86%	0%	0.00%	50%	3.45%
DEARBORN	Dearborn County	15E01	4	25%	27.16%	25%	10.68%	0%	0.00%
DECATUR	Decatur Circuit	16C01	4	80%	72.92%	80%	41.67%	80%	20.51%
DECATUR	Decatur County	16E01	4	NR	39.73%	NR	17.14%	NR	0.00%
DEKALB	DeKalb Circuit	17C01	4	50%	61.05%	50%	20.00%	67%	23.81%
DEKALB	DeKalb Superior	17D01	4	45%	44.58%	17%	16.81%	9%	11.69%
DELAWARE	Delaware Circuit	18C01	4	NR	69.01%	NR	0.00%	NR	0.00%
DELAWARE	Delaware Superior 1	18D01	4	NR	78.21%	NR	0.00%	NR	0.00%
DELAWARE	Delaware Superior 2	18D02	4	95%	67.50%	0%	25.00%	95%	0.00%
DELAWARE	Delaware Superior 3	18D03	4	90%	36.86%	30%	57.56%	30%	0.00%
DELAWARE	Delaware Superior 4	18D04	4	NR	40.57%	NR	37.20%	NR	0.00%
DUBOIS	Dubois Circuit	19C01	4	90%	26.03%	0%	30.49%	0%	12.50%
DUBOIS	Dubois Superior	19D01	4	5%	31.16%	5%	5.40%	0%	0.00%
ELKHART	Elkhart Circuit	20C01	4	99%	69.41%	99%	0.00%	99%	0.00%

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
ELKHART	Elkhart Superior 1	20D01	2	99%	85.48%	99%	0.00%	0%	0.00%
ELKHART	Elkhart Superior 3	20D03	4	NR	0.00%	NR	0.00%	NR	0.00%
ELKHART	Elkhart County 1/Elkhart	20E01	3	NR	55.89%	NR	13.33%	NR	0.00%
FAYETTE	Fayette Circuit	21C01	3	98%	89.80%	0%	0.00%	50%	24.75%
FAYETTE	Fayette Superior	21D01	2	18%	65.91%	18%	35.07%	0%	0.00%
FLOYD	Floyd Circuit	22C01	2	NR	83.51%	NR	0.00%	NR	Inv*
FLOYD	Floyd Superior	22D01	4	70%	Inv*	10%	80.00%	0%	0.00%
FLOYD	Floyd County	22E01	4	50%	11.59%	50%	16.20%	0%	0.00%
FOUNTAIN	Fountain Circuit	23C01	4	80%	60.00%	60%	29.43%	80%	100.00%
FRANKLIN	Franklin Circuit	24C01	4	NR	21.21%	NR	0.19%	NR	0.00%
FULTON	Fulton Circuit	25C01	3	50%	47.69%	20%	0.00%	10%	26.67%
FULTON	Fulton County	25E01	4	20%	18.64%	20%	14.75%	0%	0.00%
GIBSON	Gibson Circuit	26C01	4	75%	60.00%	45%	0.00%	85%	40.00%
GIBSON	Gibson Superior	26D01	4	75%	36.36%	50%	28.05%	0%	0.00%
GRANT	Grant Circuit	27C01	4	95%	78.57%	0%	0.00%	0%	0.00%
GRANT	Grant Superior 1	27D01	4	NR	85.87%	NR	0.00%	NR	0.00%
GRANT	Grant Superior 2	27D02	4	61%	83.13%	27%	25.00%	95%	59.62%
GRANT	Grant County	27E01	4	NR	59.82%	NR	26.37%	NR	0.00%
GREENE	Greene Circuit	28C01	4	NR	61.76%	NR	0.00%	NR	14.61%
GREENE	Greene Superior	28D01	4	90%	75.00%	90%	28.49%	0%	0.00%
HAMILTON	Hamilton Circuit	29C01	4	80%	Inv	0%	0.00%	10%	11.83%
HAMILTON	Hamilton Superior 1	29D01	4	NR	60.00%	NR	0.00%	NR	0.00%
HAMILTON	Hamilton Superior 2	29D02	4	40%	58.33%	0%	100.00%	0%	0.00%
HAMILTON	Hamilton Superior 3	29D03	4	NR	28.18%	NR	0.00%	NR	10.00%
HAMILTON	Hamilton County	29E01	4	NR	33.33%	NR	21.89%	NR	0.00%
HANCOCK	Hancock Circuit	30C01	3	75%	Inv	0%	0.00%	75%	0.00%
HANCOCK	Hancock Superior	30D01	3	90%	78.79%	0%	0.00%	20%	0.00%

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
HANCOCK	Hancock County	30E01	3	NR	24.30%	NR	5.24%	NR	0.00%
HARRISON	Harrison Circuit	31C01	2	60%	0.00%	0%	0.00%	90%	0.00%
HARRISON	Harrison County	31E01	4	NR	39.34%	NR	14.01%	NR	0.00%
HENDRICKS	Hendricks Circuit	32C01	2	NR	0.00%	NR	0.00%	NR	0.00%
HENDRICKS	Hendricks Superior 1	32D01	4	85%	60.94%	0%	0.00%	0%	0.00%
HENDRICKS	Hendricks Superior 2	32D02	4	70%	36.88%	50%	31.29%	0%	0.00%
HENRY	Henry Circuit	33C01	4	NR	58.54%	NR	50.00%	NR	52.38%
HENRY	Henry Superior 1	33D01	4	70%	17.86%	0%	0.00%	80%	12.90%
HENRY	Henry Superior 2	33D02	4	60%	0.00%	30%	0.00%	0%	0.00%
HOWARD	Howard Circuit	34C01	4	NR	50.42%	NR	0.00%	NR	8.95%
HOWARD	Howard Superior 1	34D01	3	90%	Inv	0%	0.00%	25%	0.00%
HOWARD	Howard Superior 2	34D02	4	NR	0.00%	NR	0.00%	NR	0.00%
HOWARD	Howard County	34E01	2	NR	38.59%	NR	20.16%	NR	0.00%
HUNTINGTON	Huntington Circuit	35C01	4	10%	54.35%	0%	0.00%	10%	42.31%
HUNTINGTON	Huntington Superior	35D01	4	50%	52.80%	30%	12.38%	0%	0.00%
JACKSON	Jackson Circuit	36C01	4	80%	35.33%	0%	0.00%	10%	1.30%
JACKSON	Jackson Superior	36D01	4	0%	0.00%	15%	8.84%	0%	0.00%
JASPER	Jasper Circuit	37C01	4	NR	0.00%	NR	100.00%	NR	6.90%
JASPER	Jasper Superior 1	37D01	4	90%	41.18%	10%	21.05%	0%	0.00%
JASPER	Jasper Superior 2	37D02	4	45%	45.63%	25%	19.27%	0%	0.00%
JAY	Jay Circuit	38C01	4	90%	28.00%	75%	15.38%	99%	80.00%
JAY	Jay Superior	38D01	4	50%	36.05%	10%	14.59%	0%	0.00%
JEFFERSON	Jefferson Circuit	39C01	4	85%	59.26%	0%	0.00%	99%	38.60%
JEFFERSON	Jefferson County	39E01	4	NR	58.67%	NR	10.43%	NR	0.00%
JENNINGS	Jennings Circuit	40C01	4	95%	15.97%	50%	15.25%	50%	14.71%
JOHNSON	Johnson Circuit	41C01	2	50%	0.00%	50%	0.00%	50%	0.00%
JOHNSON	Johnson Superior 1	41D01	3	50%	12.57%	0%	28.85%	0%	0.00%

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
JOHNSON	Johnson Superior 2	41D02	4	40%	14.49%	25%	1.13%	0%	0.00%
JOHNSON	Johnson/Franklin City	41H01	4	NR	0.00%	NR	3.73%	NR	0.00%
KNOX	Knox Circuit	42C01	4	50%	0.00%	0%	0.00%	0%	0.00%
KNOX	Knox Superior 1	42D01	4	95%	67.42%	75%	0.00%	95%	95.29%
KNOX	Knox Superior 2	42D02	4	34%	29.31%	9%	9.96%	99%	0.00%
KOSCIUSKO	Kosciusko Circuit	43C01	4	NR	39.39%	NR	0.00%	NR	0.00%
KOSCIUSKO	Kosciusko Superior	43D01	3	95%	55.68%	99%	0.00%	50%	33.82%
KOSCIUSKO	Kosciusko County	43E01	4	NR	100.00%	NR	9.86%	NR	0.00%
LAGRANGE	LaGrange Circuit	44C01	3	70%	35.59%	60%	30.00%	50%	14.29%
LAGRANGE	LaGrange Superior	44D01	4	15%	15.06%	4%	3.78%	0%	0.00%
LAKE	Lake Circuit	45C01	4	NR	0.00%	NR	0.00%	NR	0.00%
LAKE	Lake Superior, Juvenile Div.	45D06	4	0%	0.00%	0%	0.00%	20%	59.91%
LAKE	Lake Superior, County Div. 7	45D07	2	NR	23.83%	NR	18.07%	NR	0.00%
LAKE	Lake Superior, County Div. 8	45D08	3	NR	0.00%	NR	0.00%	NR	0.00%
LAKE	Lake Superior, County Div. 9	45D09	2	NR	37.95%	NR	16.79%	NR	0.00%
LAKE	Lake Superior, Crim. Div. 1	45G01	4	50%	58.86%	30%	0.00%	0%	0.00%
LAKE	Lake Superior, Crim. Div. 2	45G02	4	70%	71.66%	0%	0.00%	0%	0.00%
LAKE	Lake Superior, Crim. Div. 3	45G03	4	70%	68.11%	0%	0.00%	0%	0.00%
LAKE	Lake Superior, Crim, Div. 4	45G04	4	68%	67.41%	0%	0.00%	0%	0.00%
LAPORTE	LaPorte Circuit	46C01	4	90%	78.57%	0%	0.00%	30%	23.94%
LAPORTE	LaPorte Superior 1	46D01	4	65%	65.28%	0%	0.00%	0%	0.00%
LAPORTE	LaPorte Superior 2	46D02	4	95%	45.45%	0%	0.00%	90%	61.80%
LAPORTE	LaPorte Superior 3 in LP	46D03	4	5%	26.81%	12%	13.55%	0%	0.00%
LAPORTE	LaPorte Superior 4 in MC	46D04	4	50%	38.10%	33%	12.13%	0%	0.00%
LAWRENCE	Lawrence Circuit	47C01	4	75%	Inv	0%	66.67%	85%	45.88%
LAWRENCE	Lawrence Superior	47D01	4	NR	62.50%	NR	55.56%	NR	0.00%
LAWRENCE	Lawrence County	47E01	3	15%	48.04%	45%	16.08%	0%	0.00%

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
MADISON	Madison Circuit	48C01	4	85%	81.20%	0%	27.27%	0%	0.00%
MADISON	Madison Superior 1	48D01	4	62%	82.72%	45%	38.89%	85%	0.00%
MADISON	Madison Superior 2	48D02	4	62%	0.00%	45%	0.00%	85%	94.12%
MADISON	Madison Superior 3	48D03	4	62%	61.24%	45%	33.33%	85%	0.00%
MADISON	Madison County 1	48E01	4	62%	63.16%	45%	41.80%	85%	0.00%
MADISON	Madison County 2	48E02	4	62%	32.86%	45%	27.40%	85%	0.00%
MARION	Marion Superior, Juvenile Div.	49D09	4	NR	0.00%	NR	0.00%	NR	84.71%
MARION	Marion Municipal 4	49F04	2	NR	0.00%	NR	0.00%	NR	0.00%
MARION	Marion Municipal 5	49F05	2	NR	0.00%	NR	0.00%	NR	0.00%
MARION	Marion Municipal 6	49F06	2	NR	0.00%	NR	0.00%	NR	0.00%
MARION	Marion Municipal 9	49F09	2	60%	0.00%	60%	0.00%	0%	0.00%
MARION	Marion Municipal 10	49F10	2	NR	0.00%	NR	0.00%	NR	0.00%
MARION	Marion Municipal 11	49F11	2	NR	0.00%	NR	0.00%	NR	0.00%
MARION	Marion Municipal 13	49F13	2	NR	0.00%	NR	0.00%	NR	0.00%
MARION	Marion Municipal 14	49F14	2	NR	0.00%	NR	0.00%	NR	0.00%
MARION	Marion Municipal 15	49F15	2	NR	0.00%	NR	0.00%	NR	0.00%
MARION	Marion Municipal 16	49F16	2	NR	0.00%	NR	0.00%	NR	0.00%
MARION	Marion Superior, Crim. Div. 1	49G01	4	75%	Inv*	0%	0.00%	0%	0.00%
MARION	Marion Superior, Crim. Div. 2	49G02	3	99%	0.00%	1%	0.00%	0%	0.00%
MARION	Marion Superior, Crim. Div. 3	49G03	4	80%	65.34%	0%	0.00%	0%	0.00%
MARION	Marion Superior, Crim. Div. 4	49G04	4	NR	80.52%	NR	0.00%	NR	0.00%
MARION	Marion Superior, Crim. Div. 5	49G05	4	65%	55.95%	0%	0.00%	0%	0.00%
MARION	Marion Superior, Crim. Div. 6	49G06	2	80%	Inv*	0%	0.00%	0%	0.00%
MARSHALL	Marshall Circuit	50C01	4	NR	0.00%	NR	0.00%	NR	34.78%
MARSHALL	Marshall Superior 1	50D01	4	NR	50.54%	NR	0.00%	NR	0.00%
MARSHALL	Marshall Superior 2	50D02	4	2%	2.58%	4%	10.56%	0%	0.00%
MARTIN	Martin Circuit	51C01	3	20%	31.82%	35%	20.42%	40%	53.85%

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
MIAMI	Miami Circuit	52C01	2	80%	47.62%	50%	36.50%	30%	57.14%
MIAMI	Miami Superior	52D01	4	75%	34.38%	40%	25.44%	45%	63.33%
MONROE	Monroe Circuit 1	53C01	3	76%	65.71%	20%	0.00%	57%	0.00%
MONROE	Monroe Circuit 2	53C02	3	76%	60.00%	20%	0.00%	57%	0.00%
MONROE	Monroe Circuit 3	53C03	3	76%	63.27%	20%	0.00%	57%	0.00%
MONROE	Monroe Circuit 5	53C05	3	76%	21.09%	20%	8.83%	57%	0.00%
MONROE	Monroe Circuit 6	53C06	3	76%	0.00%	20%	0.00%	57%	0.00%
MONROE	Monroe Superior (abolish)	53D04	3	NR	53.41%	NR	0.00%	NR	0.00%
MONTGOMERY	Montgomery Circuit	54C01	2	90%	71.43%	90%	0.00%	50%	31.03%
MONTGOMERY	Montgomery Superior	54D01	4	60%	38.24%	0%	66.67%	0%	0.00%
MONTGOMERY	Montgomery County	54E01	1	90%	0.00%	90%	26.19%	50%	0.00%
MORGAN	Morgan Circuit	55C01	3	NR	92.86%	NR	Inv*	NR	61.95%
MORGAN	Morgan Superior	55D01	4	NR	81.82%	NR	Inv*	NR	0.00%
MORGAN	Morgan County	55E01	4	50%	49.11%	33%	35.12%	0%	0.00%
NEWTON	Newton Superior	56D01	4	80%	45.19%	10%	18.32%	90%	0.00%
NOBLE	Noble Circuit	57C01	3	95%	38.89%	0%	0.00%	95%	0.00%
NOBLE	Noble Superior	57D01	4	95%	34.09%	0%	0.00%	10%	9.68%
NOBLE	Noble County	57E01	4	50%	47.70%	20%	20.00%	0%	0.00%
OHIO	Ohio Circuit	58C01	4	NR	0.00%	NR	0.00%	NR	0.00%
OHIO	Ohio Superior	58D01	4	40%	0.00%	25%	0.00%	50%	0.00%
ORANGE	Orange Circuit	59C01	4	75%	81.67%	57%	100.00%	50%	30.77%
ORANGE	Orange County	59E01	4	20%	16.67%	15%	7.59%	0%	0.00%
OWEN	Owen Circuit	60C01	4	30%	84.54%	30%	17.77%	20%	25.35%
PARKE	Parke Circuit	61C01	3	NR	50.57%	NR	12.71%	NR	21.43%
PERRY	Perry Circuit	62C01	4	NR	14.38%	NR	8.33%	NR	26.67%
PIKE	Pike Circuit	63C01	4	55%	60.98%	18%	18.35%	0%	16.67%
PORTER	Porter Superior 3	64D03	4	78%	17.86%	0%	4.22%	50%	0.00%

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
PORTER	Porter Superior	4	4	5%	22.41%	5%	3.74%	0%	0.00%
POSEY	Posey Circuit	4	4	NR	60.00%	NR	Inv*	NR	24.00%
POSEY	Posey County	4	4	20%	21.10%	15%	8.23%	0%	0.00%
PULASKI	Pulaski Circuit	4	4	60%	47.37%	60%	0.00%	75%	57.14%
PULASKI	Pulaski County	4	4	NR	59.55%	NR	23.23%	NR	0.00%
PUTNAM	Putnam Circuit	4	4	87%	Inv*	0%	0.00%	70%	15.97%
PUTNAM	Putnam County	4	4	50%	21.43%	15%	8.65%	0%	0.00%
RANDOLPH	Randolph Circuit	4	4	NR	59.46%	NR	0.00%	NR	28.95%
RANDOLPH	Randolph Superior	4	4	55%	33.04%	60%	18.82%	0%	0.00%
RIPLEY	Ripley Circuit	4	4	72%	72.87%	12%	14.03%	4%	10.00%
RUSH	Rush Circuit	4	4	85%	79.07%	85%	0.00%	80%	32.14%
RUSH	Rush County	4	4	20%	43.70%	30%	26.25%	0%	0.00%
ST. JOSEPH	St. Joseph Circuit	4	4	80%	0.00%	90%	0.00%	95%	0.00%
ST. JOSEPH	St. Joseph Superior	2	2	80%	71.93%	90%	49.16%	95%	0.00%
ST. JOSEPH	St. Joseph Probate	4	4	NR	0.00%	NR	0.00%	NR	53.19%
SCOTT	Scott Circuit	4	4	85%	77.78%	0%	0.00%	10%	6.45%
SCOTT	Scott County	2	2	NR	20.00%	NR	9.38%	NR	0.00%
SHELBY	Shelby Circuit	4	4	60%	33.33%	0%	0.00%	0%	0.00%
SHELBY	Shelby Superior 1	4	4	80%	61.82%	25%	28.00%	25%	25.00%
SHELBY	Shelby Superior 2	3	3	15%	9.88%	25%	9.74%	0%	0.00%
SPENCER	Spencer Circuit	4	4	60%	40.59%	5%	0.30%	50%	40.00%
STARKE	Starke Circuit	4	4	40%	40.09%	25%	25.00%	39%	38.71%
STEBEN	Stebens Circuit	4	4	90%	61.82%	0%	0.00%	20%	50.00%
STEBEN	Stebens Superior	4	4	90%	38.62%	0%	18.14%	20%	0.00%
SULLIVAN	Sullivan Circuit	3	3	75%	50.00%	0%	0.00%	10%	0.00%
SULLIVAN	Sullivan Superior	4	4	NR	59.68%	NR	12.50%	NR	0.00%
SWITZERLAND	Switzerland Circuit	4	4	NR	0.00%	NR	0.00%	NR	0.00%

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
SWITZERLAND	Switzerland Superior	78D01	4	NR	29.49%	NR	23.45%	NR	60.00%
TIPPECANOE	Tippecanoe Circuit	79C01	3	60%	0.00%	50%	0.00%	0%	0.00%
TIPPECANOE	Tippecanoe Superior 1	79D01	3	60%	73.53%	50%	0.00%	0%	0.00%
TIPPECANOE	Tippecanoe Superior 2	79D02	2	90%	54.17%	0%	0.00%	0%	0.00%
TIPPECANOE	Tippecanoe Superior 3	79D03	2	NR	0.00%	NR	0.00%	NR	11.59%
TIPPECANOE	Tippecanoe County 1	79E01	4	40%	56.41%	25%	43.44%	0%	0.00%
TIPPECANOE	Tippecanoe County 2	79E02	2	60%	16.15%	50%	8.01%	0%	0.00%
TIPTON	Tipton Circuit	80C01	3	68%	46.67%	29%	33.33%	95%	12.50%
UNION	Union Circuit	81C01	3	75%	0.00%	25%	0.00%	0%	0.00%
VANDERBURGH	Vanderburgh Circuit	82C01	3	85%	31.73%	0%	0.00%	0%	0.00%
VANDERBURGH	Vanderburgh Superior	82D04	3	NR	0.00%	NR	0.00%	NR	35.82%
VANDERBURGH	Vanderburgh Superior	82D06	1	NR	0.00%	NR	0.00%	NR	0.00%
VANDERBURGH	Vanderburgh Superior	82D07	2	NR	0.00%	NR	0.00%	NR	0.00%
VERMILLION	Vermillion Circuit	83C01	3	70%	33.68%	70%	36.87%	70%	40.00%
VIGO	Vigo Circuit	84C01	3	95%	73.63%	27%	0.00%	0%	0.00%
VIGO	Vigo Superior 1	84D01	3	90%	61.11%	50%	0.00%	0%	0.00%
VIGO	Vigo Superior 2	84D02	3	NR	0.00%	NR	0.00%	NR	0.00%
VIGO	Vigo Superior 3 (Circuit Judge)	84D03	3	NR	0.00%	NR	0.00%	NR	0.00%
VIGO	Vigo County Court	84E01	3	NR	0.00%	NR	0.00%	NR	0.00%
VIGO	Vigo County Court	84E02	3	NR	25.31%	NR	46.12%	NR	0.00%
WABASH	Wabash Circuit	85C01	3	70%	88.00%	0%	0.00%	40%	27.63%
WABASH	Wabash County	85E01	3	44%	46.34%	12%	14.46%	0%	0.00%
WARREN	Warren Circuit	86C01	3	85%	Inv*	85%	30.53%	95%	21.43%
WARRICK	Warrick Circuit	87C01	3	NR	64.71%	NR	0.00%	NR	22.22%
WARRICK	Warrick Superior	87D01	3	NR	43.75%	NR	5.25%	NR	0.00%
WASHINGTON	Washington Circuit	88C01	3	50%	27.91%	60%	25.16%	30%	25.58%
WASHINGTON	Washington Superior	88D01	3	NR	0.00%	NR	0.00%	NR	0.00%

COUNTY	COURT	Court I.D. #	Number Quarters Reported	Felony Cases		Misdemeanors Cases		Juvenile Cases	
				IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports	IPDC Survey	QCSR Reports
WAYNE	Wayne Circuit	89C01	3	95%	84.00%	0%	0.00%	0%	0.00%
WAYNE	Wayne Superior 1	89D01	3	90%	58.89%	0%	0.00%	0%	0.00%
WAYNE	Wayne Superior 2	89D02	3	95%	63.54%	0%	0.00%	0%	0.00%
WAYNE	Wayne Superior 3	89D03	3	NR	72.27%	NR	12.31%	NR	64.55%
WELLS	Wells Circuit	90C01	2	NR	69.77%	NR	50.00%	NR	47.62%
WELLS	Wells Superior	90D01	3	30%	66.67%	25%	19.83%	0%	0.00%
WHITE	White Circuit	91C01	3	33%	0.00%	20%	0.00%	33%	0.00%
WHITE	White Superior	91D01	3	NR	61.63%	NR	15.36%	NR	0.00%
WHITLEY	Whitley Circuit	92C01	3	65%	13.16%	5%	8.11%	25%	14.29%
WHITLEY	Whitley Superior	92D01	3	3%	29.07%	5%	7.69%	0%	0.00%
				70%	50.42%	30%	16.20%	50%	27.36%
Median									

APPENDIX G

CASELOAD STANDARDS ADOPTED IN OTHER JURISDICTIONS

	NAC 1973	FL	NH* 55 TOTAL	VT	WI EFFECT. 1/1/93	MN APPROVE 4 YRS.	WA STATE	KING CO., WA	AZ
FELONIES	150	200/3**	35	150/ 172.5	156.8/15	100/150	150	155	150
MISDEMEANORS	400	400	35	400/460	410.9	250-300 GROSS 400 REG	300	380	300
JUVENILE	200	250	25	200/230	228.4	175	250	330	200
MENTAL HEALTH	200	250	OTHER 5	25/28	OTHER 246	OTHER 200	-	-	200
APPEALS	25	50/	OTHER 5	25/28	OTHER 246	OTHER 200	25	-	25

* REFERS TO OPEN CASES

** REFERS TO CAPITAL CASES

IN THE SUPREME COURT OF INDIANA

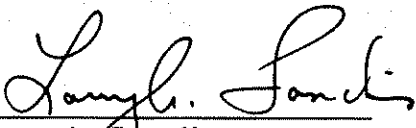
IN RE:)
)
REQUEST FOR RULEMAKING) CAUSE NO. 49S00-9210-MS-822
)
CONCERNING THE MARION COUNTY)
)
PUBLIC DEFENDER SYSTEM)

PROOF OF SERVICE

The undersigned hereby represents that he has served the following Counsel of Record in this cause by United States mail this 31st day of March, 1993:

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