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# Public Defender Commission



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## MEMORANDUM

**TO:** Governor Eric Holcomb  
Chief Justice Loretta H. Rush  
Sen. David Long, Senate President Pro Tempore  
Sen. Timothy Lanane, Senate Minority Leader  
Sen. Luke Kenley, Chair, Appropriations Committee  
Sen. Karen Tallian, Ranking Minority Member, Appropriations Committee  
Sen. Brandt Hershman, Chair, Tax and Fiscal Policy Committee  
Sen. Mark Stoops, Ranking Minority Member, Tax and Fiscal Policy  
Rep. Brian Bosma, Speaker of the House  
Rep. Scott Pelath, House Minority Leader  
Rep. Timothy Brown, Chair, House Ways and Means Committee  
Rep. Gregory Porter, Ranking Minority Member, House Ways and Means  
All Members of the Indiana General Assembly  
All Associate Justices of the Indiana Supreme Court

**FROM:** Mark Rutherford, Chairman

**DATE:** January 2017

**SUBJECT: 2015-2016 Annual Report of the Indiana Public Defender Commission**

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The Commission's Annual Report for FY 2015-2016 provides an overview of the purpose and use of the Public Defense Fund. For the last 26 years, the Commission, in cooperation with the General Assembly and the Indiana Supreme Court, has established and revised its standards for indigent defense services in both death penalty and non-death penalty cases. The report contains a brief history of the Commission and its reimbursement through the years.

The Commission is authorized by statute to reimburse all 92 counties 50% of their defense expenditures in capital (death penalty) cases. The Public Defense Fund's participating counties may also receive reimbursement up to 40% of their defense expenditures in non-capital indigent felony and juvenile delinquency cases if the counties comply with the Commission's Standards for defense services. The Commissions standards are always available at our website: [www.in.gov/publicdefender](http://www.in.gov/publicdefender).

Of the state's 92 counties, a record 57 counties requested and received reimbursement for their non-capital indigent defense expenses during the fiscal year. These 57 counties represent over two-thirds of Indiana's population. The state, through the Public Defense Fund, returned in excess of \$20.1 million to the counties this fiscal year, easing their tax burden. The Commission also authorized nearly \$600,000 in reimbursement for capital cases. These reimbursements from the Fund are the only state assistance given to the counties for their indigent defense expenditures. In contrast, the state contributes over \$61 million for trial judges' salaries and \$29 million for prosecutors' salaries; both numbers exclude pensions and benefits, also provided by the state. Indiana's 92 counties are directly responsible for the majority of the more than \$76 million in tax dollars spent on indigent defense in Indiana each year.

The money used by the Commission to reimburse Indiana counties is from the Public Defense Fund (a non-reverting state fund). When the monies available in the Fund are inadequate to reimburse counties in the program for 40% of their eligible non-capital indigent defense expenditures, the Commission's statute requires that reimbursements be prorated. From 2002 to 2009, county reimbursements averaged only 33% due to prorating. In FY 2015-2016, qualifying counties received the full 40% reimbursement on eligible non-capital public defense expenses.

Unlike other state-funded programs, the provision of adequate counsel in criminal and juvenile cases is guaranteed to all persons as a matter of constitutional right. The Sixth Amendment Center released a report on the state of indigent defense in Indiana which revealed various inadequacies in Indiana's indigent defense system and recommended several changes. One of those changes, which the Commission is advocating for, is to provide state level reimbursement for misdemeanor representation through the Public Defense Fund. Currently, the Commission is statutorily prohibited for reimbursing county misdemeanor expenses. This has resulted in public defenders being allowed to exceed Commission misdemeanor caseloads by double, triple, or even far more. Providing this reimbursement will require an increase in the Public Defense Fund in FY 2017-2018 and beyond.

The Commission thanks the judicial and legislative branches of government for their past support of the public defense reimbursement program. With the Public Defense Fund appropriation of \$22.25 million in FY 2015-2016, the Commission was able to return the full 40% of each county's request for reimbursement of indigent defense costs. However, due to increasing county participation and rising costs from higher caseloads across the state, it is expected that in Fiscal Year 2016-2017, the Commission's reimbursements will once again exceed its annual appropriation. Even if no changes to the Commission's reimbursement model are made, additional funding will be required to avoid prorating in the future.

The Commission looks forward to working with you to continue the progress that has been made to improve the quality of indigent defense services in Indiana. The goals of the Indiana Public Defender Commission include continued reimbursement to Indiana's counties for the indigent defense costs upon which they have come to rely while ensuring adequate and responsible indigent defense services throughout the state.