

INDIANA PUBLIC DEFENDER COMMISSION



**BUDGET
PRESENTATION TO
THE INDIANA
HOUSE WAYS &
MEANS COMMITTEE
1-23-19**

**MARK RUTHERFORD,
COMMISSION CHAIR**

**LARRY LANDIS,
COMMISSION VICE CHAIR**

**DERRICK MASON,
COMMISSION SENIOR STAFF ATTORNEY**

- **Structure & Funding** of Public Defense Services
- **Task Force on Public Defense**
- **2019-2021 Fiscal Request**
- **Benefits** of Strong Public Defense Services
- **Conclusion**

Structure & Funding of Indiana's PD Services



Right to a lawyer under U.S. Constitution

- **Powell v. Alabama (1932), 287 U.S. 45**
- **Gideon v. Wainwright (1963), 372 U.S. 335**
- **Douglas v. Alabama (1963), 372 U.S. 353**
- **In Re Gault (1967), 387 U.S. 1**
- **Argersinger v. Hamlin (1972), 407 U.S. 25**

Right to a lawyer under Indiana Statute or Case Law

- **Parents in CHINS cases**
- **Parents in Termination of Parental Rights cases**
- **Civil commitments**
- **Child support contempt**
- **Paternity**
- **Probation revocation**

How did Indiana get to be a county-based, county-funded public defense system?

Webb v. Baird (1854), 6 Ind. 13 at 18-19

“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.”

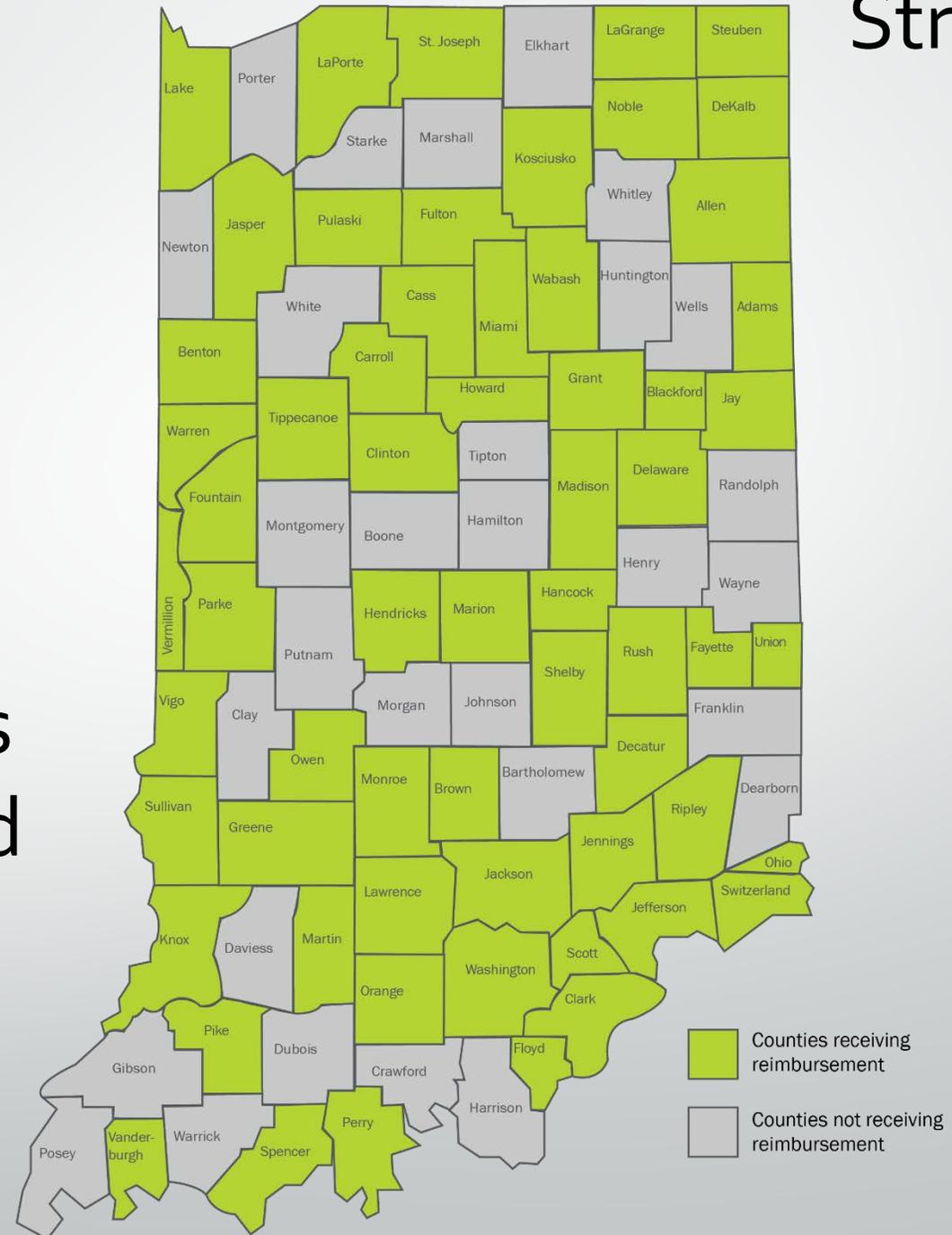
Knox County Council v. State ex rel. Kirk (1940), Ind., 29 N.E.2d 405

Short History of PD Commission

- **1989:** PD Commission established. Authorized to reimburse counties 50% of expenditures for defense services in death penalty cases.
- **1993:** PD Comm. authorized to adopt standards in non-capital cases & reimburse counties 25% of expenditures in all non-capital cases, including misdemeanors.
- **1998:** Non-capital reimbursement increased from 25% to 40% **but misdemeanor reimbursement eliminated.**
- **2001-08:** Funding inadequate. Reimbursement to counties **prorated.**
- **2008-present:** Funding adequate. 62 of 92 counties comply with standards and receive state reimbursement.

County option to seek state reimbursement

Compliance with Commission standards and guidelines required



National Scrutiny of Indiana's System

The Sixth Amendment Center (DOJ & Koch Industries Funded)



Issued a 213 page report with numerous findings and recommendations, including:

- All courts should be required to comply with state standards.
- The State should create a state appellate defender office.

Indiana Task Force on Public Defense



The Task Force

Members, Indiana Task force on Public Defense

Reporting Committee (Voting members)

Judge John Daniel Tinder, Chair
Retired, 7th Circuit Court of Appeals



Roderick E. Bohannon, *Indiana Legal Services, Inc.*
David Bottorff, *Association of Indiana Counties*
Monica Foster, *Indiana Federal Community Defenders*
Larry Landis, *Public Defender Council (Retired)*
Stephen P. Luce, *Indiana Sheriffs' Association*
Prof. Andrea D. Lyon, *Valparaiso Law School*
Judson McMillin, *Criminal Defense Attorney*
Dr. Jeff Papa, formerly of *Barnes and Thornburg*
Rep. Gregory W. Porter, *IN House*
Prof. Joel Schumm, *IU McKinney School of Law*

Advisory Subcommittee (Non-voting members)

Sen. Rodric Bray, *IN Senate*
Justice Christopher M. Goff, *IN Supreme Court*
Joseph R. Heerens, *Office of the Governor*
Judge Vicki Carmichael, *Clark Circuit Court*
Judge Mary Diekhoff, *Monroe Circuit Court*

Advisors (Non-voting)

Prof. Norman Lefstein, *IU McKinney School of Law*
David Carroll, *Sixth Amendment Center*
Judge Carr Darden, *Indiana Court of Appeals*
Mimi Laver, *ABA Center on Children and the Law*
Tim Curry, *National Juvenile Defender Center*

PROBLEMS IDENTIFIED BY THE INDIANA TASK FORCE

- **Lack of independence from judiciary.**
- **Excessive caseloads, especially in misdemeanor caseloads.**
- **Inadequate compensation.**
- **Lack of adequate investigators, interpreters, and social workers.**
- **Significant increase in CHINS & TPR cases.**
- **Attorney quality is not evaluated.**

RECOMMENDATIONS BY THE TASK FORCE

- **The state should:**
 - **require that every court that hears cases with a right to counsel should meet Commission standards;**
 - **authorize reimbursement in misdemeanor cases; and**
 - **create a state appellate office.**
- **County public defender boards should have no more than one judicial appointment.**
- **Counties should be authorized to create multi-county public defense systems.**

Commission's 5 priorities

- Base budget increase
- Reimbursement of misdemeanors
- Creation of state appellate office
- Change to composition of county boards
- Authorization for multi-county public defense programs (regionalization).



2019-2021 Public
Defender
Commission Fiscal
Request

TOP PRIORITY:

Base Budget Increase:

\$4.47 million per year



- **Without this increase, PRORATION WILL OCCUR & THE STATE WILL NOT FULFILL ITS COMMITMENT TO COUNTIES**
- **A record number of cases requiring an attorney have been filed (most significant: CHINS cases)**
- **More counties than ever are joining the Commission**

PRIORITY:

Misdemeanors:

\$5.7 million per year



- **The collateral consequences of a misdemeanor conviction are serious.**
- **65% of all adult criminal filings are misdemeanors**
- **Misdemeanor incarcerations are leading to county jail overcrowding.**
- **More crimes than ever are classified as misdemeanors (HB 1006).**

PRIORITY:

Centralize Appeals:

\$4.9 million per year



- **Everyone has a RIGHT to an appeal of their conviction.**
- **Some counties are struggling to find lawyers with the experience and training to take these cases.**
- **Takes a significant burden off counties and creates efficiencies of scale (most expensive case type for counties).**

Benefits of Strong Public Defense Services



Strong Public Defense
=
Stronger Indiana

County Jail Overcrowding

- Public defenders can be part of the solution – getting the people who need to be out back to work quickly.
- Commission Counties have a 16% lower jail population than counties that do not follow the quality standards after controlling for relevant county characteristics

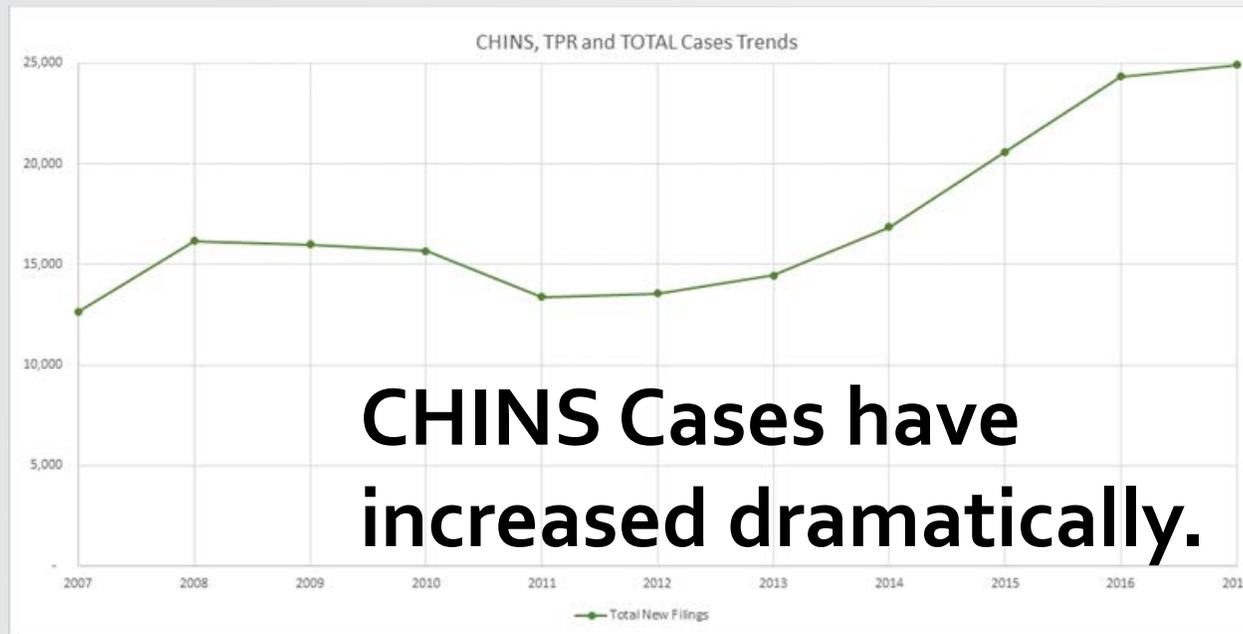


Reduced Recidivism

The Indiana State Constitution makes it clear that “the penal system shall be founded on the principles of reformation, and not vindictive justice.”



- Commission counties currently have a **20% lower rate of low-recidivism-risk (as measured by IRAS) individuals incarcerated in Department of Correction facilities**



- DCS REPORT: the number of court-involved cases in DCS is more than **double the national average**.
- Estimates show that returning a child to the home saves Indiana taxpayers approximately **\$8,135.85 per year**.
- PDs represent parents in these often heartbreaking court proceedings and seek a **just and fair resolution**.



CHINS

Children in out-of-home care due to CHINS proceedings are kept there for a 9% **(50 days) shorter time period in commission counties as compared to non-commission counties**. At the rate of \$22.29 per day for children aged 5-13 in foster care, this is a savings of **\$1,114.50 per child solely in payments to foster families**. There were 14,789 children in out-of-home care in Indiana in December 2018.

Employment/Self-Sufficiency

- Court cases that drag on cause people to lose their employment, shifting the burden from self-sufficiency to taxpayers; from an able-bodied member of the workforce to a drain on the state and county safety net.



“We must incarcerate the people we’re afraid of, and not those who we are mad at.”

--former State Senator Brent Steele



The Drug Crisis

Public Defenders are an advocate to help addicts seek treatment as part of the just, fair, and effective resolution of a criminal case. They conduct an assessment of the client and his/her case to determine the best course of action.

Well-trained public defenders can speak openly and frankly with their client and discuss options solutions that deal with addictions.

Public Defenders recognize the difference between **addicts and recreational users**.

Public Defenders can connect their clients with services, such as **Recovery Works**.

Conclusion

Our request respects the current system but seeks to take key steps to strengthen it.

1. Base Budget Increase - 4.47 million/year
2. Misdemeanor Reimbursement – 5.7 million/year
3. Appellate Office – 4.9 million/year

*Please see your packets for additional information
about Public Defense in your counties.*

*Enclosed, also is an **endorsement letter:***

Americans for Prosperity—Indiana

Freedom Partners Chamber of Commerce

Right on Crime

Due Process Institute

FreedomWorks

