Indiana Task Force on Public Defense: An Examination of Indiana's Current Delivery System

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KIM TANDY, TECHNICAL ADVISOR
KATHLEEN CASEY, STAFF ATTORNEY, PUBLIC DEFENDER COMMISSION
Why is this Task Force needed now?

We have numerous problems with access to and quality of representation which are beyond the ability of the Public Defender Commission and Public Defender Council to fix.

Some of these problems have been identified by reports from:
- Sixth Amendment Center
- OJJDP Access to Justice Juvenile Defense Improvement Grant

Indiana Counties are rightfully concerned about the risk of litigation, and two have been sued

Escalating cost of rising caseloads in CHINS/TPR some areas is creating strain on county public defender systems and county budgets
Indiana's Public Defense Structure

STATE AND COUNTY FUNDING AND RESPONSIBILITY FOR THE DELIVERY SYSTEM
Indiana is a county-based, county funded system with optional state support

**State Resources:**
- Indiana Public Defender Commission
- Indiana Public Defender Council
- Public Defender of Indiana

**County Options:**
- Counties participating in the Commission reimbursement program
- Counties not participating in the reimbursement program

Funding Sources for Trial and Appellate Level Services (2015)
Total $76,449,528
State-level resources are split between three separate agencies

<table>
<thead>
<tr>
<th>State Public Defender</th>
<th>Public Defender Commission</th>
<th>Public Defender Council</th>
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<tbody>
<tr>
<td>• IN Supreme Court agency</td>
<td>• Independent judicial agency</td>
<td>• Independent judicial agency</td>
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<td>• Represents people in PCR representation</td>
<td>• Provides reimbursement to counties</td>
<td>• Advocates for public defenders</td>
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<td>• Assists in finding appellate representation if requested</td>
<td>• Drafts and adopts standards</td>
<td>• Provides research, training and publications</td>
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County indigent defense counsel are not required to use the services provided by the Council and counties are NOT required to participate in the county reimbursement system.
**County Public Defense Structure**

**Typical Non-Commission County**

- **County Council**
  - Sets budget for courts

- **Judge**
  - Presents budget request
  - Hires public defenders or appoints counsel
  - Judge has sole hire/fire authority over PD

- **Public Defender**

**Commission Counties**

- **County Council**
  - Sets budget for courts

- **Public Defender Board**
  - 2 judicial
  - 1 County Commissioner
  - Consults with judges
  - Source for hire/fire authority
  - Manages PD budget
  - Appears before County Council

- **Public Defender**
Responsibilities of the Public Defender Commission

• Provide recommendations on CR 24 in capital cases
• Adopts standards on administration of public defense in non-capital
• Enforce standards in participating counties, including:
  • Caseload
  • Pay Parity
  • Experience requirements
Next steps

• Worked with the 6th Amendment Center to study the state
• Adopted the recommendations to study the issue further
• Authorized the Task Force to address issues beyond the Commission’s power to remedy that may require legislative action
Issues to be studied by Task Force

- Access to Counsel
- Quality of Representation
- Structural Barriers to Effective Representation
Access to Counsel

"THERE CAN BE NO EQUAL JUSTICE WHERE THE KIND OF TRIAL A MAN GETS DEPENDS ON THE AMOUNT OF MONEY HE HAS." – U.S. SUPREME COURT JUSTICE HUGO BLACK (1964)
The right to effective counsel in Indiana is well established

**The right to a lawyer:**
Criminal (felony and misdemeanor)
Juvenile delinquency
Children in Need of Services
Termination of Parental Rights
Appeals
Post-conviction
Involuntary commitments
Child support contempt

**The right to effective representation:**

*Strickland v. Washington*
- Whether the lawyer’s actions were unreasonable; and
- Whether the outcome would likely have been different

*United States v. Cronic* (prejudice presumed)
- Presence of counsel at critical stages
- Attorney qualifications, training and resources
- Sufficient time for consultation and to prepare an adequate defense
- Independence of the defense function
Many individuals who cannot afford counsel go unrepresented in Indiana or do not receive counsel at critical stages.

The Sixth Amendment Center Report noted:

- Delays in initial hearings and charging decisions resulted in individuals remaining in jail without the appointment of counsel.
- Unrepresented defendants have been encouraged to negotiate directly with prosecutors and permitted to plead guilty at initial hearings, and waive counsel.
- Lack of uniform indigency procedures result in uncounseled pleas.
- Individuals determined ineligible for a public defender because bond was posted in their case.
PD appointments vary widely by case type

2016 Total Cases Filed and Public Defender Appointments by Case Type

- Major Felony: 36% PD Appointments, 85% Total Cases
- FD/F6: 75% PD Appointments, 70% Total Cases
- CM: 70% PD Appointments, 69% Total Cases
- JD: 69% PD Appointments, 69% Total Cases
- JC: 70% PD Appointments, 70% Total Cases
- JT: 57% PD Appointments, 70% Total Cases
Quality of Representation
Attorney workloads can impair adequate representation

- No statewide limits on number of cases
- No minimum hours for attorneys doing public defense – PT or FT
- Non-participating counties do not report caseloads or cases assigned
  - Flat fee contract can incentivize quick disposal of cases
  - Public defense cases can compete with unlimited number of private clients.
Additional factors affecting representation

Inadequate compensation can affect representation
Inadequate resources can impede effective representation
Structural Barriers
Counties are not required to participate in the reimbursement program

Counties which do not participate in the Commission program:

- Are not required to meet caseload standards
- Do not report data to the Commission
- Are not independently governed by a separate board
- Are not subject to the Commission’s requirements for training or other standards
Lack of Accountability for Quality

1) No oversight of attorney performance in misdemeanor cases because there is no reimbursement

2) No oversight over counties not in the Commission program

3) Inadequate funding and staffing of the Commission to properly audit, monitor and assist counties in meeting requirements

4) Limited oversight connected to practice standards
Funding constraints: Counties have Limited Means to Fund Increases in Public Defense

- Counties are limited in increasing revenue because of property tax caps
- When PD costs increase, revenue must be shifted from another important area

CHINS and TPR case filings have risen since 2011
Specialized Areas of Practice May Need Further State Responsibility

Local defender programs handle areas of specialization without sufficient resources, training or expertise, including:

- Juvenile delinquency and status offender cases
- Children in Need of Services (CHINS) and Termination of Parental Rights
- Appeals of trial court matters
Juvenile Delinquency and Status Cases

**Why is this needed?**

Over 30% of youth in delinquency cases waived counsel in 2016

Less than 30% of status offenders received counsel in 2016

Youth are committed and sent to DOC in some cases without having had a lawyer

Appeals in juvenile cases are minimal; 76% of counties had no juvenile appeals in 2016

Limited access to experts, social workers and technical assistance can hamper quality of representation.
Children in Need of Services and Termination of Parental Rights

Why should we examine this?

CHINS case filings have nearly doubled in the last 5 years.

Demands on public defender programs are strained by the weight of these increases and the impact on caseload compliance.

There is no state agency specifically focused on parent representation for CHINS and TPR cases.

Strengthening parental representation has been shown to reduce removals and reduce costs.
Children in Need of Protection and Termination of Parental Rights trends
Why should we examine it?

Appellate rates vary significantly county to county.

Unlike the AG’s office, there is no statewide office which handles appeals directly.

Limited information has been provided through the Sixth Amendment Center on appellate and post-conviction services.

Greater state involvement in appellate services may be necessary.
Appellate numbers vary significantly throughout the state

CRIMINAL CASES
3 counties in Indiana had 0 appeals of any criminal type in 2016
74 of Indiana’s counties had less than 1% of cases appealed

Total cases: 216,981
Total appeals: 1,405 (.6%)

JUVENILE CASES
75 of Indiana’s counties had 0 appeals in juvenile in 2016
Marion County had the highest number of juvenile appeals with 19 appeals filed

Total cases: 13,804
Total appeals: 43 (.3%)

CHINS CASES
Total Cases: 20,063
Total Appeals: 124* (.6%)

TPR CASES
Total filed: 4284
Total appeals: 375* (8.75%)
## Task Force Process

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<td><strong>Fact Finding</strong></td>
<td>• Review of Current Structure, funding, policies and practice</td>
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<tr>
<td>(Sept.-Mar.)</td>
<td>• Examination of standards, constitutional requirements and ethical considerations</td>
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<td>• Implications for specialized areas</td>
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<tr>
<td><strong>Analysis of Information</strong></td>
<td>• State/County responsibilities</td>
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<tr>
<td>(April – June)</td>
<td>• Comparison of other models</td>
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<td>• Cost considerations</td>
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<tr>
<td><strong>Recommendations and Report</strong></td>
<td>• Review of draft</td>
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<td>(July-August)</td>
<td>• Finalization of report to Public Defender Commission</td>
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Questions for Task Force Members

What other questions do you have regarding this presentation?

What other questions should be answered as we go through this process?

Who would you like to hear from that could help inform the Task Force on these issues?