

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

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# Why is this Task Force needed now?

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**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**

**Johnson County – *Alford, et al. v. Johnson County Commissioners, et al.***

**Allen County – *Wilson, et al. v. Allen County, et al.***

**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

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STATE AND COUNTY FUNDING AND RESPONSIBILITY FOR THE  
DELIVERY SYSTEM

# Indiana is a county-based, county funded system with optional state support

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## State Resources:

Indiana Public Defender Commission

Indiana Public Defender Council

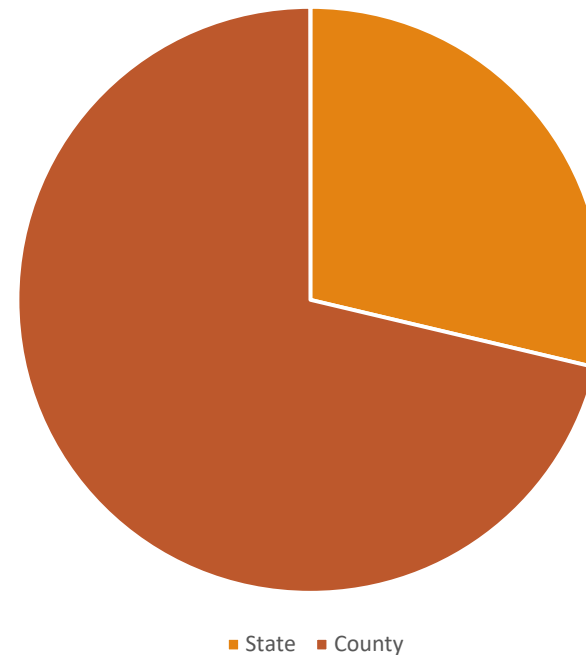
Public Defender of Indiana

## 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

### State Public Defender

- IN Supreme Court agency
- **Represents people in PCR representation**
- Assists in finding appellate representation if requested

### Public Defender Commission

- Independent judicial agency
- **Provides reimbursement to counties**
- Drafts and adopts standards

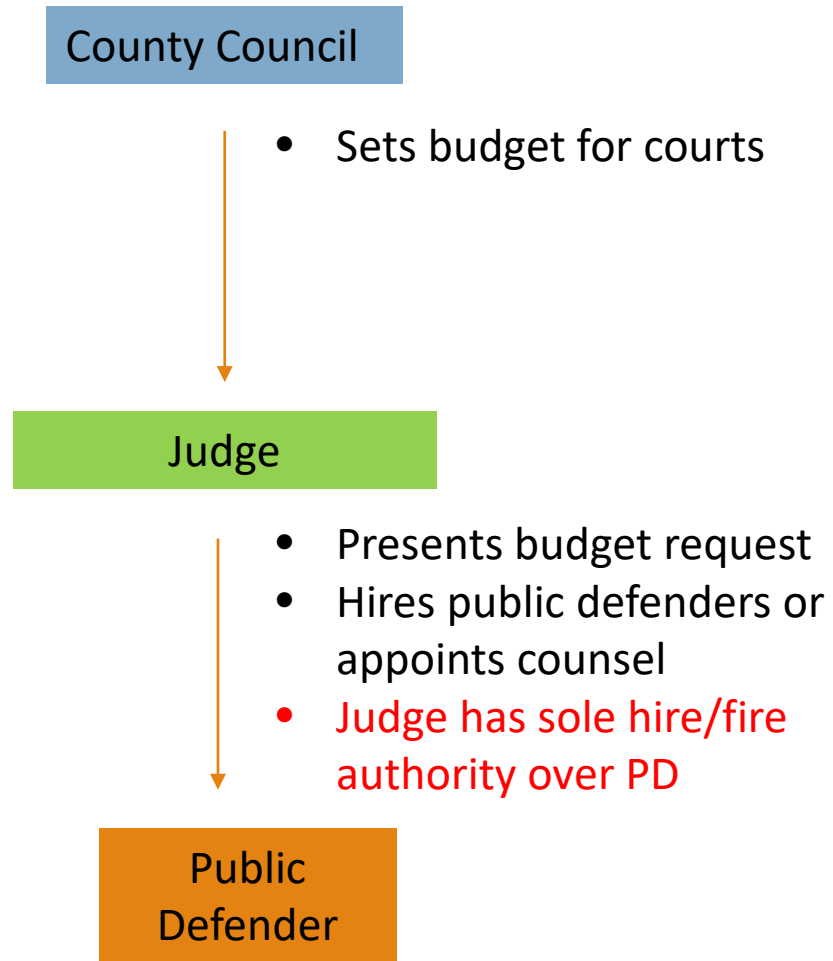
### Public Defender Council

- Independent judicial agency
- **Advocates for public defenders**
- Provides research, training and publications

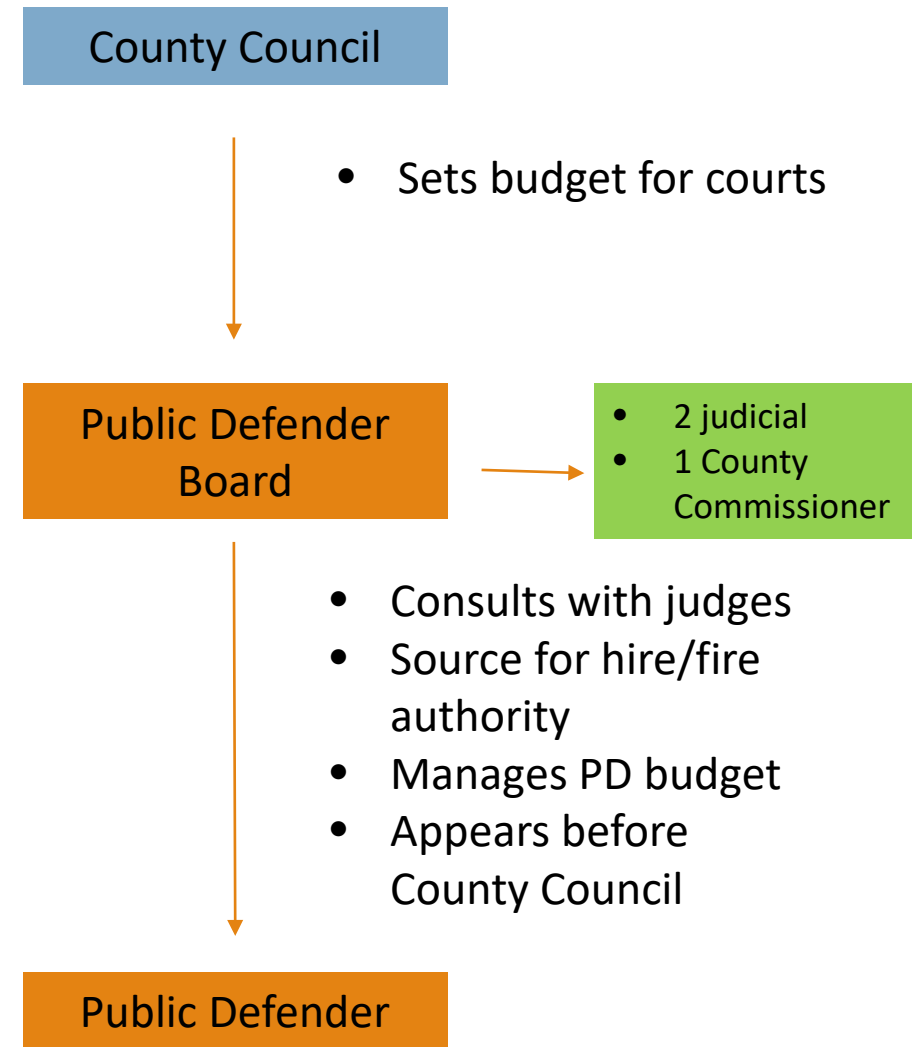
County indigent defense counsel are not required to use the services provided by the Council and counties are NOT required to participate in the county reimbursement system.

# County Public Defense Structure

## Typical Non-Commission County



## Commission Counties



# Responsibilities of the Public Defender Commission

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- 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

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- Worked with the 6<sup>th</sup> 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

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Access to  
Counsel

Quality of  
Representation

Structural  
Barriers to  
Effective  
Representation

# Access to Counsel

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"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

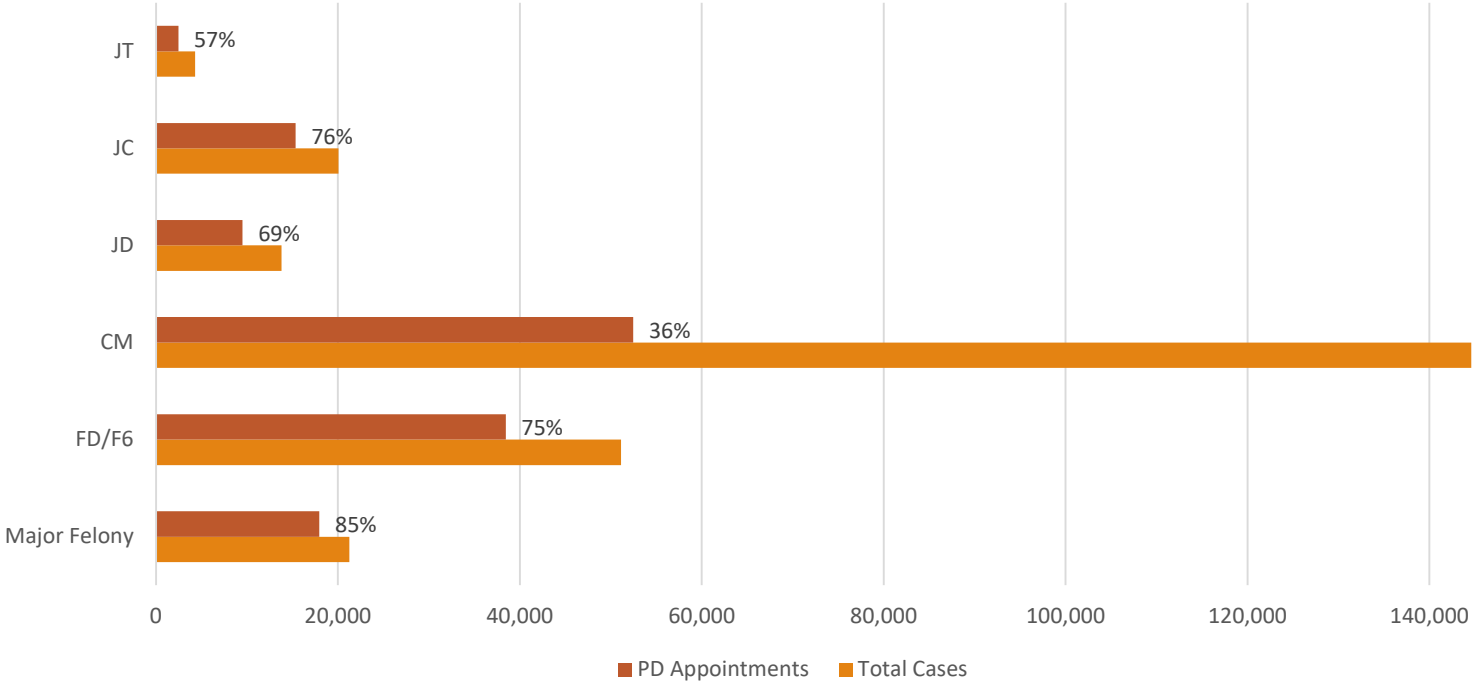
Many individuals who cannot afford counsel go unrepresented in Indiana or do not receive counsel at critical stages

## **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

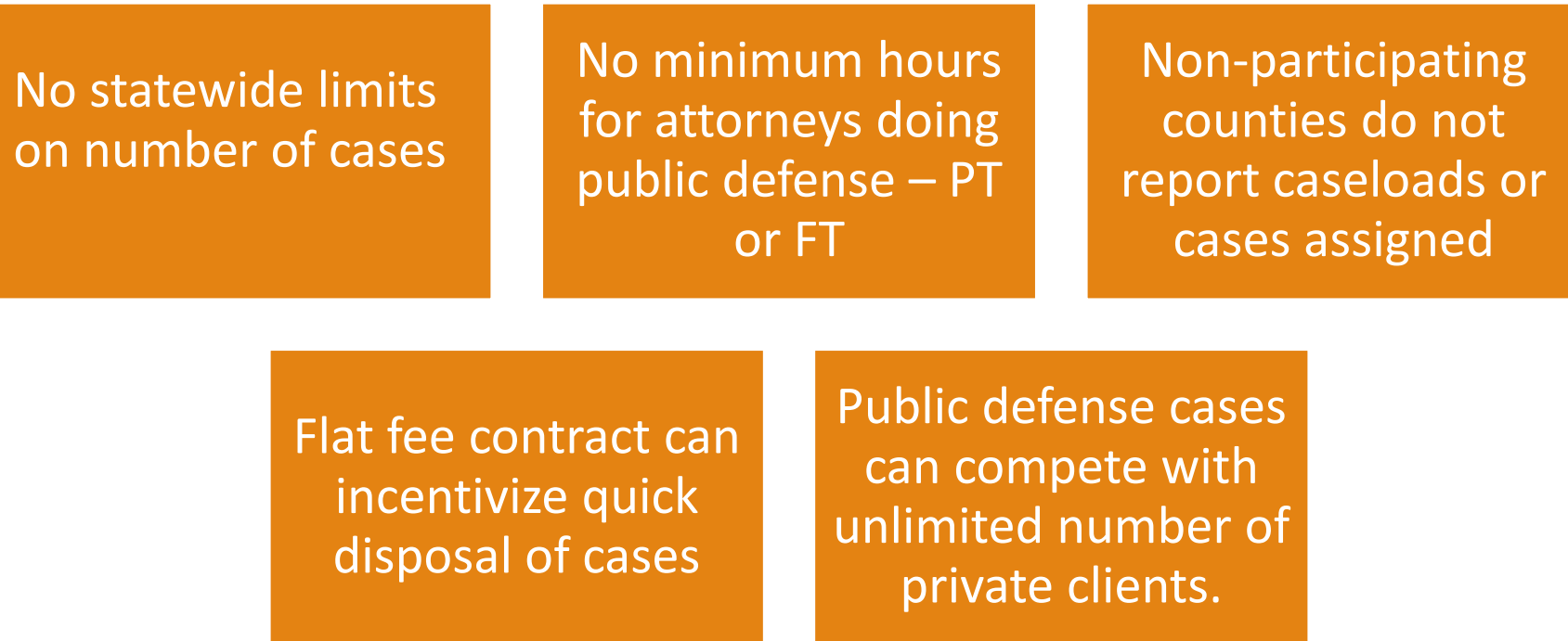


# Quality of Representation

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# Attorney workloads can impair adequate representation

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# Additional factors affecting representation

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Inadequate  
compensation can  
affect  
representation

Inadequate  
resources can  
impede effective  
representation



# Structural Barriers

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# Counties are not required to participate in the reimbursement program

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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

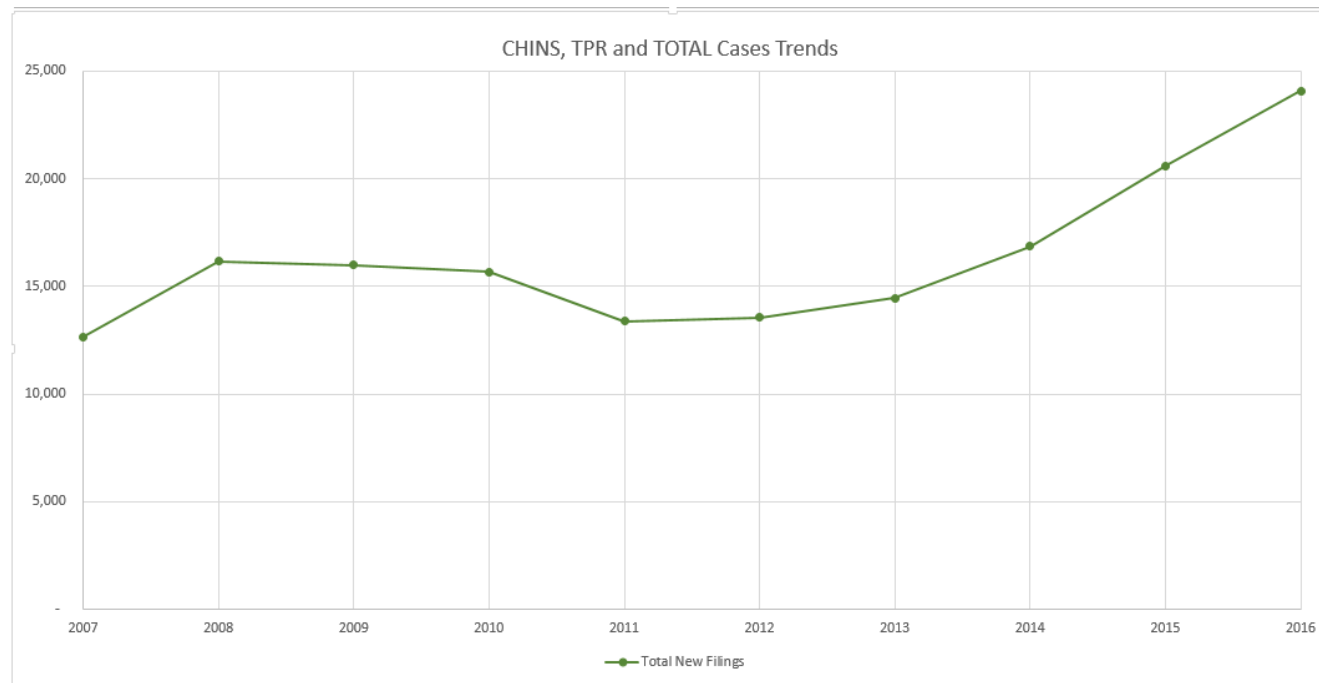
# Lack of Accountability for Quality

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- 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

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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

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## **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

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## Why should we examine this?

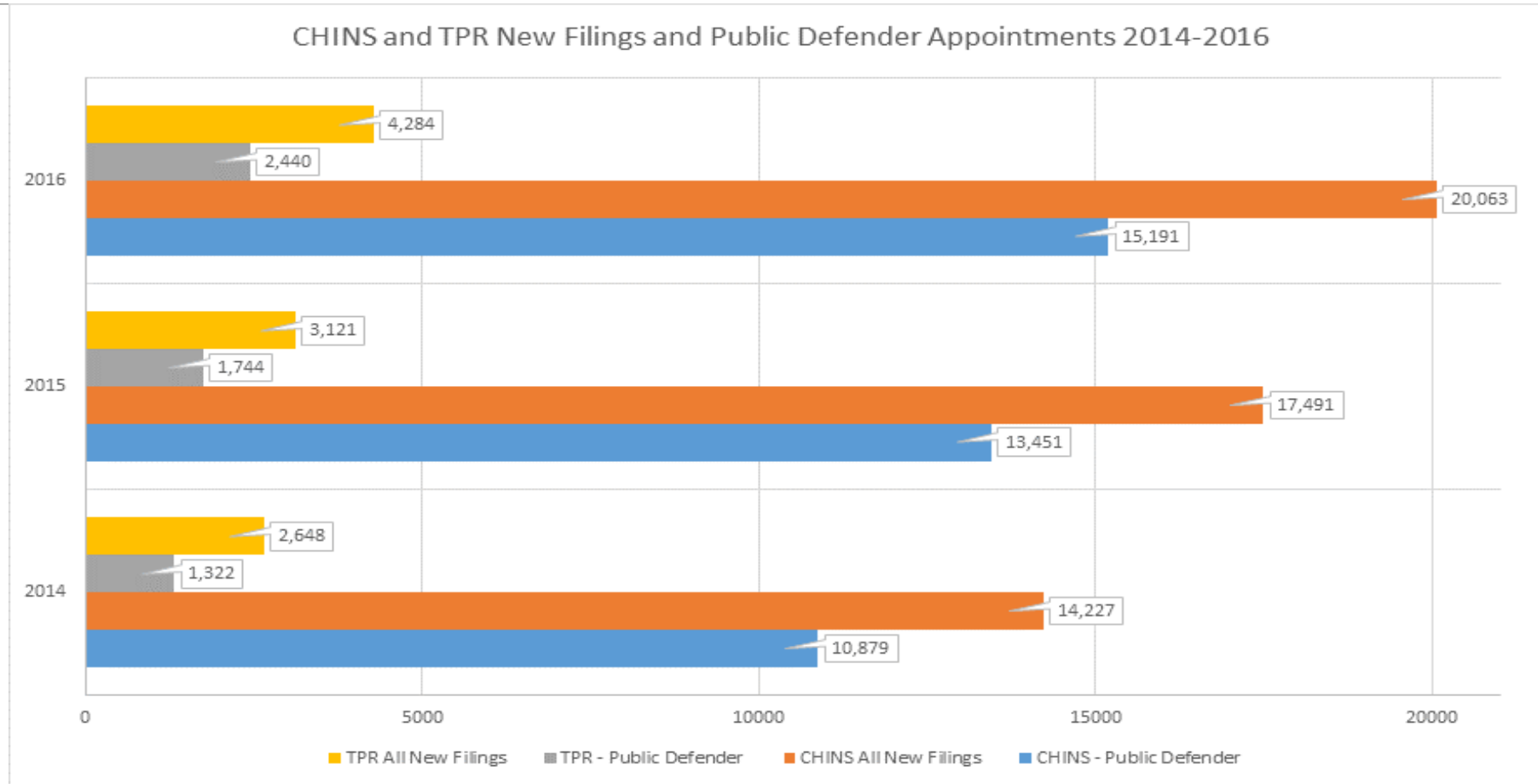
CHINS case filings have nearly doubled in the last 5 years.

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





# Appellate and Post-Conviction Representation

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## 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

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## 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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## Fact Finding (Sept.-Mar.)

- Review of Current Structure, funding, policies and practice
- Examination of standards, constitutional requirements and ethical considerations
- Implications for specialized areas

## Analysis of Information (April – June)

- State/County responsibilities
- Comparison of other models
- Cost considerations

## Recommendations and Report (July-August)

- Review of draft
- Finalization of report to Public Defender Commission

# Questions for Task Force Members

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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?