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MEMORANDUM

TO: Governor Frank O'Bannon
Chief Justice Randall T. Shepard
Hon. Robert D. Garton, Senate President Pro Tempore
Hon. Richard D. Young, Jr., Senate Minority Leader
Hon. Lawrence Borst, Chair, Senate Finance Committee
Hon. Vi Simpson, Ranking Minority Member, Senate Finance Committee
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Hon. Brian C. Bosma, House Minority Leader
Hon. Bill Crawford, Chair, House Ways and Means Committee
Hon. Jeffrey K. Espich, Ranking Minority Member, House Ways and Means Committee
All Members of the Indiana General Assembly

FROM: Norman Lefstein
Chairman

SUBJECT: Indiana Public Defender Commission Annual Report Submitted in
Compliance with I.C. 33-9-13-3

DATE: January 2003

This memorandum, attached spreadsheet, and our Annual Report for FY 2001-2002 provide an overview of the Public Defense Fund [hereafter the "Fund"] administered by the Indiana Public Defender Commission.

The Commission's efforts during the past decade, in cooperation with the General Assembly and the Supreme Court, have contributed to important improvements in

Indiana's system of indigent defense. In fact, Indiana's success is often cited as a national model illustrating how a state can improve its defense services for the poor. However, Indiana's progress is threatened unless the Fund's annual appropriation is increased. When the Fund was created more than ten years ago, members of the legislature were advised that the state's appropriation for indigent defense would eventually require at least \$10 million annually.

For the fiscal year ending June 30, 2002, the appropriation for the Fund was \$6 million. **Column A** of the attached spreadsheet shows that during fiscal year 2001-2002 claims for 40% reimbursements in non-capital cases, from forty-six counties with Commission-approved plans, exceeded \$6.9 million. Death penalty cases, which are accorded priority in reimbursements from the Fund pursuant to statute, totaled \$473,317. Since there were insufficient funds to pay all non-capital claims, reimbursements to these counties were prorated. Obviously, this creates difficulties for the counties because they have relied upon reimbursements from the Fund in planning their budgets.

For fiscal year 2002-2003, the Fund's appropriation increased to \$7 million. However, *even without any new counties applying for reimbursements for non-capital cases*, this increased appropriation will most likely once again be insufficient to avoid proration of non-capital claims. As shown in **Column B** of the spreadsheet, the projected expenses from the Fund for fiscal year 2002-2003 exceed \$7.2 million.

In planning for 2003-2004, we expect that some additional counties will submit plans for reimbursement in non-capital cases, although the Commission is not actively encouraging counties to do so. As shown in **Column C**, if the number of counties with approved plans for reimbursement in non-capital cases reaches 60, we estimate that the appropriation for the Fund will need to be at least \$8,822,000 to avoid prorating claims. Our current estimate for reimbursing all of Indiana's 92 counties, as set forth in **Column D**, is \$11,219,000.

While the Commission appreciates that these are difficult financial times for the State of Indiana, we believe that the state's improved adversarial system of indigent defense merits the full backing of the legislature. Unlike other state-funded programs, the provision of adequate counsel to the poor in criminal and juvenile cases is guaranteed to all persons as a matter of constitutional right.

I look forward to working with you in continuing the progress that has been made to improve the quality of indigent defense services in Indiana. I especially hope that we can find a way to provide to Indiana's counties the reimbursements for defense costs upon which they have come to rely.