

**ANNUAL REPORT OF THE  
INDIANA PUBLIC DEFENDER COMMISSION  
2001-2002**

**I. STATUTORY DUTIES**

The Indiana Public Defender Commission was created by the General Assembly in 1989 by P.L. 284-1989. The Commission's primary purposes are to: (1) make recommendations concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under I.C. 35-50-2-9; (2) adopt guidelines and salary and fee schedules pursuant to which Indiana counties are eligible for reimbursement under I.C. 33-9-14; and (3) review and approve requests from county auditors for state reimbursement from the public defense fund in capital cases.

In 1993, the General Assembly amended the Commission's statute in P.L. 283-1993 and authorized reimbursement from the public defense fund of 25% of a county's net expenditures in non-capital cases.

Effective July 1, 1997 the reimbursement level in non-capital cases was amended to provide 40% reimbursement of defense services in non-capital cases, except misdemeanors.

Under I.C. 33-9-13-3(a), the Commission is currently mandated to do the following:

- (1) Make recommendations to the Indiana Supreme Court concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following subjects:
  - (A) Determining indigency and eligibility for legal representation.
  - (B) Selection and qualifications of attorneys to represent indigent defendants at public expense.
  - (C) Determining conflicts of interest.
  - (D) Investigative, clerical, and other support services necessary to provide adequate legal representation.
- (2) Adopt guidelines and standards for indigent defense services under which counties are eligible for reimbursement under IC 33-9-14, including but not limited to the following subjects:

- (A) Determining indigency and the eligibility for legal representation.
  - (B) The issuance and enforcement of orders requiring defendants to pay for the costs of court appointed legal representation under IC 33-9-11.5.
  - (C) The use and expenditure of funds in the county supplemental public defender services fund established by IC 33-9-11.5.
  - (D) Qualifications of attorneys to represent indigent defendants at public expense.
  - (F) Minimum and maximum caseloads of public defender offices and contract attorneys.
- (3) Make recommendations concerning the delivery of indigent defense services in Indiana.
  - (4) Make an annual report to the Governor, the General Assembly, and the Supreme Court on the operation of the public defense fund. *As added by P.L.284-1989, sec. 4. Amended by P.L.283-1993, sec. 2.*

II. COMMISSION MEMBERS

Under its original enabling legislation, the commission had seven members: three appointed by the Governor; three appointed by the Chief Justice of the Supreme Court of Indiana; and one appointed by the Board of Trustees of the Indiana Criminal Justice Institute. In P.L. 283-1993, the General Assembly added four legislators to the Commission. The following is a list of the Commission members as of the date of this report, their cities of residence, and the date of the expiration of their terms:

APPOINTMENTS MADE BY THE GOVERNOR

<u>Name</u>	<u>City</u>	<u>Member Since</u>
Norman Lefstein	Indianapolis	09-20-1989
Monica Foster	Indianapolis	09-20-1989
Les Duvall	Indianapolis	04-23-1999

APPOINTMENTS MADE BY THE CHIEF JUSTICE

<u>Name</u>	<u>City</u>	<u>Member Since</u>
Bettye Lou Jerrel	Evansville	11-16-1993
Rebecca McClure	Lebanon	09-16-1998
Hon. Daniel Donahue	Jeffersonville	02-13-1998

APPOINTMENT MADE BY THE INDIANA CRIMINAL JUSTICE INSTITUTE

<u>Name</u>	<u>City</u>	<u>Member Since</u>
Susan Carpenter	Indianapolis	10-06-1989

APPOINTMENTS MADE BY SPEAKER OF HOUSE

<u>Name</u>	<u>City</u>	<u>Member Since</u>
Rep. Ralph M. Foley	Martinsville	07-15-1994
Rep. Greg Porter	Crown Point	12-12-2001

APPOINTMENTS MADE BY SENATE PRO TEMPORE

<u>Name</u>	<u>City</u>	<u>Member Since</u>
Sen. Richard Bray	Martinsville	07-12-1993
Sen. Timothy Lanane	Anderson	08-10-1998

III. COMMISSION MEETINGS

During FY 2001-02, the Commission met on August 29 and December 5, 2001 and February 27 and May 29, 2002.

IV. SUMMARY OF COMMISSION ACTIVITIES

A. Capital Cases

The Commission held its first meeting on January 29, 1990. The Commission's primary focus during its first year was the preparation of a proposed new court rule concerning the appointment and compensation of counsel to represent defendants in capital cases. In November 1990, the Commission submitted to the Supreme Court a proposed new court rule concerning these subjects. In June 1991, the Supreme Court issued a draft of a proposed amendment to Criminal Rule 24 regarding the appointment and compensation of counsel in capital cases, which incorporated many of the Commission's recommendations. Subsequently, the Commission submitted to the Supreme Court a written response to the Court's proposed draft rule. On October 25, 1991, the Supreme Court adopted amendments to Criminal Rule 24, effective January 1, 1992.

In 1991, the Commission adopted guidelines under which Indiana counties are eligible for reimbursement for indigent defense services in capital cases from the public defense fund under IC 33-9-14. These guidelines, effective January 1, 1992, require compliance with Criminal Rule 24.

In 1992, as a service to the trial courts and after consultation with Chief Justice Shepard, the Commission began maintaining a roster of attorneys who qualify for appointment in capital cases as either lead counsel, co-counsel, or appellate counsel based on their experience and their compliance with the training requirements in Criminal Rule 24. The roster is intended to aid trial judges in seeking qualified counsel when death penalty requests are filed against indigent defendants, although trial judges may appoint attorneys who are not on the roster if they meet the qualifications specified in Criminal Rule 24. The roster was revised in the spring of 1998, with attorneys being requested to update their information. The revised roster was placed in a computer database for distribution to trial judges. In March of 1999 the roster became available via the Internet, located at, [www.state.in.us/judiciary/admin/pub\\_def/attindex.html](http://www.state.in.us/judiciary/admin/pub_def/attindex.html)

Also during 1998-99, the Commission studied and reported to the Chief Justice regarding defense costs in several capital cases. The Commission offered to be involved, through staff, in assisting courts in budgeting for capital cases. At the request of the trial court judges, the Commission also revised the form used by counties to submit claims for reimbursement in capital cases.

The Commission also amended the capital guidelines to provide for reimbursement in situations where standby counsel has been appointed for a defendant who has waived right to counsel. The Commission requires such counsel to meet the requirements for lead counsel under Criminal Rule 24.

In 1999-00, the Commission began studying the use of salaried public defenders as counsel in death penalty cases. The Marion County Public Defender Agency proposed using a full-time salaried public defender rather than an hourly paid attorney to handle death penalty cases. Subsequently, a full-time salaried public defender provision was added to Criminal Rule 24 by the Supreme Court effective January 1, 2001.

During 2000-01, the Commission amended its Guidelines in Capital cases to provide that requests for reimbursement be submitted within 120 days of the date the county paid the underlying invoice. This amendment should result in timelier filing of claims and more accurate budgeting. Finally, the Commission has been reviewing instances of non-compliance with Criminal Rule 24 with the intent of making a report to the Supreme Court.

In 2001-02, no substantial changes were made in Commission Guidelines or procedures regarding Capital cases.

## B. Non-Capital Cases

After the enactment of P.L. 283-1993, the Commission began work on the adoption of standards for non-capital cases under IC 33-9-13-3(a)(2). On June 29, 1994, the Commission approved a draft of standards and authorized the distribution of the proposed standards to county auditors, commissioners, council members, judges, and public defenders for comment. On September 1, 1994, the Commission reviewed the comments, made revisions, and adopted standards for non-capital cases with an effective date of January 1, 1995.

On December 2, 1994, the Commission adopted a policy authorizing counties to phase-in compliance with the non-capital standards on a court-by-court basis so long as the County made a commitment to bring all indigent defense services into compliance with the standards within a reasonable period.

The Legislature enacted P.L. 202-1997, which effective July 1, 1997, changed the reimbursement to 40% of defense services in all non-capital cases, except misdemeanors.

In February of 1998, the Commission added a full time staff attorney through the Supreme Court's Division of State Court Administration. The staff attorney has assisted the Commission in a pro-active approach to reimbursements in non-capital cases.

On September 1, 1999, the Commission adopted a revision to Commission Standard E (4) regarding qualifications of counsel in juvenile delinquency matters. This revision gave consideration to juvenile court experience in qualifying counsel to handle juvenile delinquency matters. Previously, only adult felony experience was considered.

On June 28 and 29, 2000, three Commission members, Chairman Norman Lefstein, Senator Richard Bray, and Senator Timothy Lanane attended a symposium on indigent defense in Washington D.C. sponsored by the Department of Justice. One of the highlights of the event was the address by Attorney General Janet Reno, and her reference to the Indiana reimbursement program as a model to be followed by other states.

During the 2000-01 fiscal year, eleven additional counties became eligible for reimbursement: Adams, Carroll, Jay, Kosciusko, Monroe, Noble, Rush, Steuben, Vanderburgh, Washington, and White. At the close of the fiscal year, 48 counties were eligible for reimbursement in noncapital cases. Staff for the Commission has continued to make presentations to counties regarding participation in the reimbursement program. Meetings were conducted throughout the year with officials of thirty counties, as interest in participation continues to grow.

A good portion of 2000-01 was devoted to the budget process in the General Assembly. Due to rapid growth in the number of participating counties, payment of reimbursements from the January 31 and April 18, 2001 meetings had to be suspended.

These claims should have been prorated, but a bookkeeping mistake resulted in payment in full.

Chairman Lefstein met with legislative leaders, who were provided projections and background material regarding the Commission's needs. Despite more difficult financial times, the General Assembly approved an increase in the Commission's appropriation from \$2.4 million per year to \$6.0 million for fiscal year 2001-02 and \$7.0 for fiscal year 2002-03. This appropriation should permit the state to continue improving its indigent defense system and accommodate growth in the number of participating counties.

In 2001-02, two new counties, Pike and Perry, became eligible for reimbursement in noncapital cases. This raised the number of approved counties to fifty. The year also saw suspension of noncapital claims. In June of 2002, the suspended claims were prorated and payments made, though about \$1.2 million in claims could not be paid because funding was insufficient to pay all claims in full.

During the year, Marion County took a major step in achieving full compliance, by bringing its Class D felony courts into compliance with Commission Standards.

The most notable change for noncapital claims was the Commission adoption of a guideline for the submission of noncapital claims. The new guideline requires counties to submit noncapital claims not later than forty-five days after the end of the calendar quarter in which they were incurred. This change will provide a more orderly and predictable report schedule.

Attached as Appendix A is a table showing the counties that are eligible for state reimbursement in non-capital cases, and those actively considering obtaining eligibility.

#### V. PUBLIC DEFENSE FUND (IC 33-9-14)

State reimbursement to the counties is paid from the public defense fund: a dedicated, non-reverting state fund created by I.C. 33-9-14 in 1989. Originally, the public defense fund received an annual appropriation of \$650,000. In 1995, the Indiana General Assembly increased the annual appropriation from the state general fund to the public defense fund to \$1.25 million for FY 1995-97. Effective July 1, 1997 the annual appropriation was increased to a total of \$3.0 million for the biennium. For the biennium beginning July 1, 1999, the annual appropriation was set at \$2.4 million per year. For the fiscal year beginning July 1, 2001, the appropriation has been increased to \$6.0 million, with the appropriation for the following fiscal year set at \$7.0 million. The balance in the fund on June 30, 2002, was depleted due to the proration of previously suspended claim. (See, Fiscal Report, Appendix B). On July 1, 2002, the Commission's appropriation increased to \$7.0 million.

The state reimbursement to the counties for their expenditures in providing indigent defense services is the only state assistance given to the counties to provide indigent defense services. In contrast, the state contributes approximately \$36 million for judges' salaries and

\$17 million for prosecutor's salaries.

A request from a county for state reimbursement is initiated by a written request from the county auditor to the commission for reimbursement for the certified expenditures paid by the county for indigent defense services. Upon a determination by the commission that the county auditor's request is in compliance with commission guidelines, the state court administrator then certifies to the state auditor that the county should receive 50% of the approved expenditures for indigent defense services in the capital case. The state auditor then issues a warrant to the state treasurer for payment from the public defense fund to the county for the amount certified. This same procedure will be used for reimbursing counties for 40% of their expenditures in non-capital cases.

In FY 2001-02, the Commission reimbursed counties \$473,317 for expenditures in capital cases. Attached, as Appendix C is a table showing the reimbursements to counties in capital cases. In FY 2001-02, the Commission reimbursed counties \$4,869,314 for expenditures in non-capital cases. Attached, as Appendix D is a table showing the reimbursements to counties in non-capital cases.