

STATE OF INDIANA



Norman Lefstein, Chairman
Indianapolis

Senator Richard D. Bray
Martinsville

Susan Carpenter
Indianapolis

Hon. Daniel F. Donahue
Clark Circuit Court

Les Duvall
Indianapolis

Representative Ralph M. Foley
Martinsville

Monica Foster
Indianapolis

Betty Lou Jerrel
Evansville

Senator Timothy S. Lanane
Anderson

Rebecca S. McClure
Lebanon

Representative Bob Kuzman
Crown Point

PUBLIC DEFENDER COMMISSION

115 West Washington Street, Suite 1080
Indianapolis, Indiana 46204-3466

(317) 232-2542

Fax (317) 233-6586

E-mail: nbowling@courts.state.in.us

http://www.in.gov/judiciary/admin/pub_def/

MEMORANDUM

TO: Governor Joseph E. Kernan
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
Hon. B. Patrick Bauer, House Speaker
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: Annual Report of the Indiana Public Defender Commission

DATE: February 25, 2004

I am pleased to attach the Annual Report of the Indiana Public Defender Commission (IPDC) for FY 2002-2003.

This memorandum provides a brief overview of funding for legal representation of indigent persons in Indiana who have a constitutional right to counsel at government expense. As noted in both this memorandum and in our Annual Report, Indiana does not provide adequate funds to assure effective defense services for these accused persons.

The state's 92 counties provide most of the \$31 million devoted to indigent defense in Indiana. In addition, by virtue of the Public Defense Fund, which receives \$7 million annually from the state, the Commission is *authorized* by statute to (1) reimburse counties 50% of their defense expenditures in capital cases and (2) reimburse counties 40% of their defense expenditures in non-capital cases *if* the counties comply with the Commission's standards for defense services. However, the overall level of financial support for indigent defense provided by Indiana's counties is woefully inadequate; and, to make matters worse, sufficient funds are not appropriated by the legislature for the Public Defense Fund. The Commission, therefore, cannot reimburse counties the full 40% of their non-capital defense expenditures, which results in payments to counties being prorated as required by law.

In 2003, indigent defense expenditures among the 50 states was collected under the auspices of the American Bar Association (ABA) and published on an ABA website. When populations and total expenditures are taken into account, these data show that on a per capita basis Indiana ranks 46th among the 50 states in total indigent defense expenditures. Only Arkansas, Mississippi, North Dakota, and Utah lag behind our state. (See "State and County Expenditures for Indigent Defense," September 2003, at www.indigentdefense.org). The impact of inadequate funding for indigent defense not only undermines the fairness of our justice system, but it also risks the conviction of truly innocent persons, as discussed in the enclosed op ed article that I published in the *Indianapolis Star* on January 4, 2004.

The impact of the Commission's inability to reimburse counties the full 40% of their indigent defense expenditures in non-capital cases is illustrated by what occurred during the last quarter of fiscal year 2002-2003. At the time, the Commission was faced with reimbursement claims from 44 eligible counties in excess of \$1.8 million, but the Public Defense Fund contained only \$1.2 million. Thus, the Commission was required, as provided under Indiana law, to suspend payments for non-capital claims temporarily. This, of course, was a financial problem for the counties because they were counting on receiving reimbursement in a timely manner.

This is not the first time that inadequate funding has crippled the Commission's efforts to relieve counties from some of the financial hardship of providing acceptable levels of indigent defense services. During the first and second quarters of calendar year 2002, the Commission was forced to suspend payments for non-capital claims and prorate reimbursements. The following chart shows the extent of the financial burden imposed upon Indiana counties as a result of inadequate appropriations for the Public Defense Fund:

Counties:	What counties were entitled to:	What counties actually received:	What counties "lost" due to inadequate funding:
ADAMS	\$22,073.05	\$11,420.75	\$10,652.30
BENTON	\$6,003.79	\$3,106.40	\$2,897.39
CARROLL	\$17,802.83	\$9,211.31	\$8,591.52
CLARK	\$34,560.79	\$17,882.00	\$16,678.79
DECATUR	\$2,569.87	\$1,329.67	\$1,240.20
FAYETTE	\$37,237.68	\$19,267.04	\$17,970.63
FLOYD	\$63,728.15	\$32,973.40	\$30,754.75
FOUNTAIN	\$17,762.21	\$9,190.30	\$8,571.91
FULTON	\$13,497.49	\$6,983.70	\$6,513.79
GREENE	\$13,012.69	\$6,732.86	\$6,279.83
HANCOCK	\$18,037.41	\$9,332.69	\$8,704.73
HENRY	\$26,076.18	\$13,492.00	\$12,584.18
JASPER	\$25,637.10	\$13,264.82	\$12,372.28
JENNINGS	\$12,951.38	\$6,701.14	\$6,250.24
KNOX	\$33,082.81	\$17,117.28	\$15,965.53
KOSCIUSKO	\$109,441.94	\$56,626.05	\$52,815.89
LAKE	\$291,549.53	\$150,849.82	\$140,699.71
LAPORTE	\$34,264.38	\$17,728.64	\$16,535.74
MADISON	\$208,625.72	\$107,944.45	\$100,681.27
MARION	\$696,480.02	\$360,363.77	\$336,116.25
MIAMI	\$49,382.41	\$25,550.81	\$23,831.59
MONROE	\$64,781.63	\$33,518.48	\$31,263.15
MONTGOMERY	\$32,307.08	\$16,715.92	\$15,591.16
NOBLE	\$41,247.87	\$21,341.94	\$19,905.93
OHIO	\$2,396.52	\$1,239.98	\$1,156.54
ORANGE	\$22,544.20	\$11,664.53	\$10,879.67
PARKE	\$4,973.92	\$2,573.54	\$2,400.38
PERRY	\$11,117.32	\$5,752.18	\$5,365.14
PIKE	\$27,941.47	\$14,457.12	\$13,484.35
PULASKI	\$13,781.90	\$7,130.85	\$6,651.04
RUSH	\$16,000.90	\$8,278.98	\$7,721.92
SCOTT	\$15,481.99	\$8,010.49	\$7,471.50
SHELBY	\$23,847.99	\$12,339.12	\$11,508.87
SPENCER	\$3,933.24	\$2,035.09	\$1,898.15
STEUBEN	\$32,587.48	\$16,860.99	\$15,726.48
SULLIVAN	\$2,935.20	\$1,518.70	\$1,416.51
UNION	\$169.33	\$87.61	\$81.72
VANDEBURGH	\$226,834.32	\$117,365.71	\$109,468.61
VERMILLION	\$16,280.89	\$8,423.85	\$7,857.04
VIGO	\$80,151.97	\$41,471.21	\$38,680.76
WARREN	\$1,961.32	\$1,014.80	\$946.52
WASHINGTON	\$15,981.97	\$8,269.19	\$7,712.78
WHITE	\$14,488.72	\$7,496.57	\$6,992.15
WHITLEY	\$5,826.75	\$3,014.80	\$2,811.95
TOTAL:	\$2,411,351.41	\$1,247,650.56	\$1,163,700.85

Thus, during the first half of calendar year 2002 alone, Indiana counties endured a “loss” of \$1,163,700.85 due to inadequate indigent defense funding from the State of Indiana. Unfortunately, these losses will be repeated indefinitely in future years if the level of funding for the Public Defense Fund is not increased. For instance, for the third and fourth quarters of calendar year 2003, the Commission once again had to suspend reimbursement payments of non-capital claims. When these suspended claims were eventually paid, the balance in the Public Defense Fund enabled these claims to be paid at approximately 26%, rather than the full 40% promised by statute. This funding shortfall has meant a loss of approximately \$1.33 million for Indiana counties, for a total loss of roughly \$2.5 million during calendar years 2002 and 2003.

The Commission’s efforts during the past decade, in cooperation with the General Assembly and the Supreme Court, have contributed to improvements in Indiana’s system of indigent defense. However, Indiana’s progress is clearly threatened unless the Public Defense 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, 2003, the appropriation for the Public Defense Fund was \$7 million. **Column A** of the attached spreadsheet (see pages 6-8 of this memorandum) shows that during fiscal year 2002-2003 claims for 40% reimbursements in non-capital cases, from 47 counties in compliance with Commission standards, exceeded the \$7 million appropriation by \$219,709. Death penalty cases, which are accorded priority in reimbursements from the Fund pursuant to statute, totaled \$413,805. Since there were insufficient funds to pay all non-capital claims during the last quarter of the fiscal year, non-capital reimbursements to these counties were suspended until the end of the fiscal year. Obviously, this creates difficulties for the counties because they have relied upon reimbursements from the Fund in planning their budgets.

For fiscal year 2003-2004, the Fund’s appropriation remains \$7 million. However, the Commission has now approved Allen County’s proposed plan and standards for indigent defense, and we anticipate that this county’s participation in the reimbursement program will add an additional \$660,000 in annual non-capital claims. Furthermore, several other counties have taken significant steps to qualify for participation in the reimbursement program even though the Commission has not actively encouraged them to do so due to our precarious financial situation. In short, the Commission cannot fulfill the promise of its statute without a substantial increase in the appropriation of the Public Defense Fund. At the current level of funding, suspension and prorating of county claims will become more frequent and severe, thereby imposing even greater financial hardships on those progressive Indiana counties that have endeavored to improve their indigent defense programs.

As shown in **Column B** of the spreadsheet below, the projected expenses from the Fund for fiscal year 2003-2004 are likely to exceed \$8.4 million. In addition, as depicted 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 \$9,461,299 to avoid prorating claims. Our current estimate for reimbursing all of Indiana’s 92 counties, as set forth in **Column D**, is \$11,858,059.

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

For its part, rest assured that the IPDC is absolutely committed to improving indigent defense representation in our state. But we cannot do it alone. We need the help of our elected officials.

Attachments

**PUBLIC DEFENSE FUND REIMBURSEMENTS FOR 2002-03
AND PROJECTIONS FOR THE FUTURE**

COUNTY	A	B	C	D
	2002-03 REQUESTED*	2003-04 PROJECTED	2004-05 60 COUNTIES	2005-06 92 COUNTIES
ADAMS	\$39,519.19	\$57,505	\$57,505	\$57,505
ALLEN		\$660,170	\$660,170	\$660,170
BARTHOLOMEW				\$108,480
BENTON	\$13,120.60	\$14,985	\$14,985	\$14,985
BLACKFORD	\$9,609.45	\$15,605	\$15,605	\$15,605
BOONE				\$82,820
BROWN				\$17,400
CARROLL	\$32,390.32	\$32,175	\$32,175	\$32,175
CASS				\$76,240
CLARK	\$133,991.76	\$144,180	\$144,180	\$144,180
CLAY				\$20,000
CLINTON				\$30,800
CRAWFORD		\$14,200	\$14,200	\$14,200
DAVISS				\$70,080
DEARBORN				\$40,000
DECATUR	\$30,793.09	\$30,793.09	\$30,793.09	\$30,793.09
DEKALB				\$64,480
DELAWARE				\$176,500
DUBOIS				\$41,855
ELKHART				\$280,000
FAYETTE	\$109,057.33	\$109,057.33	\$109,057.33	\$109,057.33
FLOYD	\$137,969.87	\$143,490	\$143,490	\$143,490
FOUNTAIN	\$23,110.59	\$35,025	\$35,025	\$35,025
FRANKLIN				\$17,520
FULTON	\$40,117.35	\$40,117.35	\$40,117.35	\$40,117.35
GIBSON			\$24,340	\$24,340
GRANT				\$130,000
GREENE	\$82,107.03	\$82,107.03	\$82,107.03	\$82,107.03
HAMILTON				\$200,400
HANCOCK	\$132,831.77	\$132,831.77	\$132,831.77	\$132,831.77
HARRISON				\$33,560
HENDRICKS				\$91,625
HENRY	\$123,029.11	\$123,029.11	\$123,029.11	\$123,029.11
HOWARD			\$160,860	\$160,860
HUNTINGTON				\$44,320
JACKSON				\$28,600
JASPER	\$31,998.18	\$43,950	\$43,950	\$43,950
JAY	\$71,889.56	\$71,889.56	\$71,889.56	\$71,889.56
JEFFERSON			\$36,000	\$36,000
JENNINGS	\$29,639.73	\$29,639.73	\$29,639.73	\$29,639.73
JOHNSON			\$160,000	\$160,000
KNOX	\$100,724.19	\$119,280	\$119,280	\$119,280

COUNTY	A	B	C	D
	2002-03 REQUESTED*	2003-04 PROJECTED	2004-05 60 COUNTIES	2005-06 92 COUNTIES
KOSCIUSKO	\$80,021.18	\$80,021.18	\$80,021.18	\$80,021.18
LAGRANGE			\$24,000	\$24,000
LAKE	\$995,190.47	\$995,190.47	\$995,190.47	\$995,190.47
LAPORTE	\$141,027.57	\$144,255	\$144,255	\$144,255
LAWRENCE				\$41,600
MADISON	\$564,681.26	\$564,681.26	\$564,681.26	\$564,681.26
MARION	\$2,237,551.16	\$2,133,036	\$2,133,036	\$2,133,036
MARSHALL	\$0.00			\$31,300
MARTIN			\$17,000	\$17,000
MIAMI	\$116,781.24	\$118,930	\$118,930	\$118,930
MONROE	\$264,743.60	\$264,743.60	\$264,743.60	\$264,743.60
MONTGOMERY	\$34,782.26	\$61,450	\$61,450	\$61,450
MORGAN			\$80,120	\$80,120
NEWTON			\$38,000	\$38,000
NOBLE	\$97,671.90	\$97,671.90	\$97,671.90	\$97,671.90
OHIO	\$12,752.72	\$15,100	\$15,100	\$15,100
ORANGE	\$41,738.47	\$41,738.47	\$41,738.47	\$41,738.47
OWEN				\$24,760
PARKE	\$27,147.22	\$31,480	\$31,480	\$31,480
PERRY	\$50,205.73	\$50,205.73	\$50,205.73	\$50,205.73
PIKE	\$53,231.00	\$53,231.00	\$53,231.00	\$53,231.00
PORTER				\$140,000
POSEY			\$27,640	\$27,640
PULASKI	\$34,803.79	\$33,300	\$33,300	\$33,300
PUTNAM				\$31,560
RANDOLPH				\$52,020
RIPLEY				\$32,680
RUSH	\$31,025.20	\$31,025.20	\$31,025.20	\$31,025.20
ST. JOSEPH			\$275,200	\$275,200
SCOTT	\$45,056.73	\$58,750	\$58,750	\$58,750
SHELBY	\$84,929.70	\$87,505	\$87,505	\$87,505
SPENCER	\$18,860.00	\$23,570	\$23,570	\$23,570
STARKE				\$17,620
STEUBEN	\$71,264.58	\$70,110	\$70,110	\$70,110
SULLIVAN	\$22,436.00	\$22,436.00	\$22,436.00	\$22,436.00
SWITZERLAND	\$23,240.64	\$30,770	\$30,770	\$30,770
TIPPECANOE				\$204,120
TIPTON				\$16,000
UNION	\$2,589.56	\$6,245	\$6,245	\$6,245
VANDEBURGH	\$570,772.10	\$570,772.10	\$570,772.10	\$570,772.10
VERMILLION	\$26,237.20	\$30,400	\$30,400	\$30,400
VIGO	\$339,377.22	\$339,377.22	\$339,377.22	\$339,377.22
WABASH				\$49,240
WARREN	\$3,957.40	\$13,055	\$13,055	\$13,055

COUNTY	A	B	C	D
	2002-03 REQUESTED*	2003-04 PROJECTED	2004-05 60 COUNTIES	2005-06 92 COUNTIES
WARRICK				\$25,780
WASHINGTON	\$46,229.01	\$46,229.01	\$46,229.01	\$46,229.01
WAYNE				\$170,400
WELLS			\$54,440	\$54,440
WHITE	\$15,703.07	\$22,040	\$22,040	\$22,040
WHITLEY	\$23,803	\$46,350	\$46,350	\$46,350
NONCAPITAL	\$7,219,709.96	\$7,983,699	\$8,881,299	\$11,273,059
CAPITAL	\$413,805.05	\$413,805.05	\$500,000	\$500,000
EXPENSES	\$78,475	\$78,475	\$80,000	\$85,000
	\$7,711,990.01	\$8,475,979	\$9,461,299	\$11,858,059