

# STATE OF INDIANA



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## PUBLIC DEFENDER COMMISSION

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## MEMORANDUM

**TO:** Governor Mitch Daniels  
Chief Justice Randall T. Shepard  
Hon. Robert D. Garton, Senate President Pro Tempore  
Hon. Robert L. Meeks, Chair, Senate Finance Committee  
Hon. Vi Simpson, Ranking Minority Member, Senate Finance Committee  
Hon. Richard D. Young, Jr., Senate Minority Leader  
Hon. Brian C. Bosma, House Speaker  
Hon. B. Patrick Bauer, House Minority Leader  
Hon. Jeffrey K. Espich, Chair, House Ways and Means Committee  
Hon. Bill Crawford, Ranking Minority Member, House Ways and Means Committee  
All Members of the Indiana General Assembly  
All Associate Justices of the Indiana Supreme Court

**FROM:** Norman Lefstein  
Chairman

**DATE:** June 28, 2005

**SUBJECT:** **Annual Report of the Indiana Public Defender Commission**

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I am pleased to enclose the Annual Report of the Indiana Public Defender Commission for fiscal year 2003-2004.

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 the Commission's Annual Report, Indiana does not provide adequate funds to assure effective defense services for these accused persons.

In 2002, 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 46<sup>th</sup> 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](http://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 innocent persons. As a recent report issued by the ABA’s Standing Committee on Legal Aid and Indigent Defendants found, “indigent defense in the United States remains in a state of crisis, resulting in a system that lacks fundamental fairness and places poor persons at constant risk of wrongful conviction.” GIDEON’S BROKEN PROMISE: AMERICA’S CONTINUING QUEST FOR EQUAL JUSTICE, page 38, available at [www.indigentdefense.org](http://www.indigentdefense.org).

In Indiana, the state’s 92 counties provide the majority of the more than \$30 million devoted to indigent defense. Meanwhile, the Commission is *authorized* by statute to reimburse counties 50% of their defense expenditures in capital cases and 40% of their defense expenditures in non-capital felony and juvenile delinquency cases *if* the counties comply with Commission standards for defense services. Thus, by virtue of its statute, the Commission has authority to set standards in an effort to improve the quality of defense representation in the state. (These standards are available at our website: [www.in.gov/judiciary/admin/pub\\_def/](http://www.in.gov/judiciary/admin/pub_def/))

The funds used by the Commission to reimburse Indiana counties are from the Public Defense Fund (a non-reverting fund), which either has received or will receive from the State the following sums:

- FY 2003-2004 -- \$7 million;
- FY 2004-2005 -- \$8 million; and
- FY 2005-2006 -- \$10 million.

But not only is the overall level of financial support for indigent defense provided by Indiana’s counties inadequate, as noted above, so, too, are the appropriations by the legislature for the Public Defense Fund. The Commission, therefore, cannot always reimburse counties the full 40% of their non-capital defense expenditures, which results in payments to counties being prorated as required by law.

#### **FY 2003-2004**

As noted above, the Public Defense Fund received payments from the state totaling \$7 million during fiscal year 2003-2004. However, reimbursement claims to counties totaled \$8,914,831. This sum was covered from the Public Defense Fund only because the Fund carried forward a balance from the preceding fiscal year (FY 2002-2003) and the Commission borrowed approximately \$1.2 million from the Fund’s 2004-2005 appropriation in order to cover reimbursements for the prior fiscal year.

## **FY 2004-2005**

During the current fiscal year, the Commission has had to prorate its payments to counties for the second quarter of the fiscal year. This resulted in counties “losing” reimbursements totaling \$771,538. The Commission also anticipates that there will be a shortfall in the Public Defense Fund balance to cover all county reimbursement claims for the third quarter of the fiscal year. While the Public Defense Fund was increased to \$8 million for fiscal year 2004-2005, reimbursement claims are projected to be \$10,174,286, as reflected in the attached chart.

## **FY 2005-2006**

Although the Commission was pleased that the most recent legislative session increased the Public Defense Fund to \$10 million beginning in fiscal year 2005-2006, we do not expect this sum to be sufficient to cover all county reimbursement claims. As shown in the attached chart, even if no additional counties qualify for reimbursements from the Public Defense Fund, total reimbursement requests are once again expected to exceed \$10 million during 2005-2006. Moreover, if only three additional counties qualify for reimbursements, which the Commission believes is likely to occur, total reimbursement claims are expected to exceed \$11 million.

\* \* \*

The Commission’s efforts during the past decade, in cooperation with the General Assembly and the Supreme Court of Indiana, have contributed to improvements in the State’s system of indigent defense. However, Indiana’s progress is clearly threatened unless the Public Defense Fund’s annual appropriation continues to increase. As the chart attached to this memorandum indicates, if all 92 Indiana counties were to qualify for participation in the reimbursement program, the Public Defense Fund would require an appropriation of more than \$13.5 million annually.

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 its elected officials. 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, please be assured that the Commission is committed to improving indigent defense representation in our state. But we cannot do it alone. We need the help of the executive, judicial, and legislative branches of government.

Attachments

## PUBLIC DEFENSE FUND REIMBURSEMENT PROJECTION

COUNTY	A	B	C	D
	2003-04 REQUESTED	2004-05 PROJECTED	2006-07 56COUNTIES	2006-07 92COUNTIES
ADAMS	\$46,710.17	\$53,750	\$53,750	\$53,750
ALLEN	\$472,197.63	\$1,100,000	\$1,100,000	\$1,100,000
BARTHOLOMEW				\$108,480
BENTON	\$25,366.72	\$26,000	\$26,000	\$26,000
BLACKFORD	\$17,998.50	\$18,000	\$18,000	\$18,000
BOONE			\$146,500*	\$146,500
BROWN				\$17,400
CARROLL	\$37,242.80	\$37,240	\$37,240	\$37,240
CASS				\$76,240
CLARK	\$161,784.93	\$145,000	\$145,000	\$145,000
CLAY				\$20,000
CLINTON				\$30,800
CRAWFORD				\$14,200
DAVISS				\$70,080
DEARBORN				\$40,000
DECATUR	\$30,421.32	\$30,425.00	\$30,425.00	\$30,425.00
DEKALB				\$64,480
DELAWARE				\$176,500
DUBOIS				\$41,855
ELKHART				\$280,000
FAYETTE	\$86,482.38	\$86,500.00	\$86,500.00	\$86,500.00
FLOYD	\$116,997.38	\$137,500	\$137,500	\$137,500
FOUNTAIN	\$21,127.56	\$21,150	\$21,150	\$21,150
FRANKLIN				\$17,520
FULTON	\$43,178.73	\$43,000.00	\$43,000.00	\$43,000.00
GIBSON			\$24,340	\$24,340
GRANT	\$52,782.00	\$156,000	\$156,000	\$156,000
GREENE	\$87,224.56	\$87,000.00	\$87,000.00	\$87,000.00
HAMILTON				\$200,400
HANCOCK	\$110,253.65	\$140,500.00	\$140,500.00	\$140,500.00
HARRISON				\$33,560
HENDRICKS				\$91,625
HENRY	\$102,483.33	\$65,000.00	\$91,000.00	\$91,000.00
HOWARD			\$160,860*	\$160,860
HUNTINGTON				\$44,320
JACKSON				\$28,600
JASPER	\$37,999.11	\$43,950	\$43,950	\$43,950
JAY	\$48,335.28	\$48,500.00	\$48,500.00	\$48,500.00
JEFFERSON			\$36,000	\$36,000
JENNINGS	\$30,478.60	\$38,500.00	\$38,500.00	\$38,500.00
JOHNSON			\$160,000	\$160,000
KNOX	\$133,152.20	\$119,280	\$141,200	\$141,200
KOSCIUSKO	\$106,875.70	\$108,750.00	\$108,750.00	\$108,750.00

LAGRANGE				\$24,000
LAKE	\$1,109,960.00	\$1,172,000.00	\$1,172,000.00	\$1,172,000.00
LAPORTE	\$136,578.31	\$144,255	\$144,255	\$144,255
LAWRENCE				\$41,600
MADISON	\$575,137.95	\$590,000.00	\$590,000.00	\$590,000.00
MARION	\$2,462,609.30	\$2,871,000	\$3,160,000	\$3,160,000
MARSHALL	\$0.00			\$31,300
MARTIN	\$37,651.34		\$37,651	\$37,651
MIAMI	\$106,682.51	\$110,000	\$110,000	\$110,000
MONROE	\$268,233.62	\$268,000.00	\$268,000.00	\$268,000.00
MONTGOMERY	\$60,510.34	\$65,200	\$65,200	\$65,200
MORGAN				\$80,120
NEWTON				\$38,000
NOBLE	\$76,795.95	\$97,600.00	\$97,600.00	\$97,600.00
OHIO	\$13,680.05	\$14,000	\$14,000	\$14,000
ORANGE	\$54,872.60	\$42,000.00	\$42,000.00	\$42,000.00
OWEN				\$24,760
PARKE	\$24,797.41	\$25,000	\$25,000	\$25,000
PERRY	\$20,682.83	\$26,000.00	\$26,000.00	\$26,000.00
PIKE	\$75,122.64	\$53,231.00	\$53,231.00	\$53,231.00
PORTER				\$140,000
POSEY				\$27,640
PULASKI	\$32,729.52	\$33,300	\$33,300	\$33,300
PUTNAM			\$95,700*	\$95,700
RANDOLPH				\$52,020
RIPLEY				\$32,680
RUSH	\$40,329.44	\$50,200.00	\$50,200.00	\$50,200.00
ST. JOSEPH				\$275,200
SCOTT	\$60,568.35	\$65,200	\$65,200	\$65,200
SHELBY	\$84,729.07	\$78,000	\$80,000	\$80,000
SPENCER	\$28,181.47	\$30,000	\$30,000	\$30,000
STARKE				\$17,620
STEUBEN	\$85,568.94	\$86,500	\$86,500	\$86,500
SULLIVAN	\$30,502.36	\$27,000.00	\$27,000.00	\$27,000.00
SWITZERLAND	\$29,776.70	\$30,800	\$30,800	\$30,800
TIPPECANOE		\$171,600	\$175,000	\$175,000
TIPTON				\$16,000
UNION			\$6,245	\$6,245
VANDERBURGH	\$578,744.29	\$570,000.00	\$570,000.00	\$570,000.00
VERMILLION	\$22,016.43	\$25,000	\$25,000	\$25,000
VIGO	\$351,320.03	\$345,000.00	\$345,000.00	\$345,000.00
WABASH				\$49,240
WARREN	\$5,746.19	\$13,055	\$13,055	\$13,055
WARRICK				\$25,780
WASHINGTON	\$62,786.28	\$61,200.00	\$61,200.00	\$61,200.00
WAYNE				\$170,400
WELLS				\$54,440
WHITE	\$7,126.50	\$8,100	\$8,100	\$8,100
WHITLEY	\$55,711.80	\$50,000	\$50,000	\$50,000

NONCAPITAL	\$8,268,245	\$9,629,286	\$10,632,902	\$13,095,762
CAPITAL	\$585,976	\$470,000.00	\$500,000	\$500,000
EXPENSES	\$60,610	\$75,000	\$135,000	\$135,000
	<u>\$8,914,831</u>	<u>\$10,174,286</u>	<u>\$11,267,657</u>	<u>\$13,730,762</u>

\* Boone, Howard, and Putnam counties have expressed interest in qualifying for reimbursements from the Public Defense Fund.