

**ANNUAL REPORT OF THE  
INDIANA PUBLIC DEFENDER COMMISSION  
2003-2004**

**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. 33-40-6; 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. 33-40-5-4, 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 33-40-6, including the following:

- (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 33-40-3.
  - (C) The use and expenditure of funds in the county supplemental public defender services fund established by IC 33-40-3-1.
  - (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.

The report to the general assembly under subsection (4) must be in an electronic format under IC 5-14-6.

## 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 their terms began:

### 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	02-13-1996

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. Bob Kuzman	Crown Point	05-23-2003

APPOINTMENTS MADE BY SENATE PRO TEMPORE

<u>Name</u>	<u>City</u>	<u>Member Since</u>
Sen. Joseph C. Zakas	Granger	08-12-2004
Sen. Timothy Lanane	Anderson	08-10-1998

III. COMMISSION MEETINGS

During FY 2002-03, the Commission met on September 4 and December 11, 2003, and March 10, 2004. The June 2004 meeting of the Commission was rescheduled and held on July 28, 2004.

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 (recodified as IC 33-40-6). 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 the 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 2003-04, no substantial changes were made in Commission Guidelines or procedures regarding Capital cases.

B. Non-Capital Cases

At its March 10, 2004 meeting, the Commission amended its Standards for Indigent Services in Non-Capital Cases, Standard J, providing new juvenile caseload standards. This was done to reflect more realistically the different demands in time and resources necessary to provide diligent representation in the various types of juvenile cases in which lawyers provide indigent representation.

Because of conflicts in schedules and change of personnel, the Commission rescheduled its June 2004 meeting to July 28, 2004. As a result of this rescheduling, the final meeting for FY 2003-2004 was held after the end of the fiscal year. At its meeting, the Commission approved capital claims in the amount of \$107,755 and non-capital claims in the amount of \$2,237,253. These claims were in excess of the Public Defense Fund balance as of the end of FY2003-2004; therefore, approximately \$1,200,000 from the fiscal year 2004-2005 budget appropriation was used to pay these claims.

Historical Background:

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) (recodified as IC 33-40-5-4). 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. Tom Carusillo served in that capacity from 1998 through May of 2003, and Neal Bowling served in that capacity from May 2003 through March 2004. The current staff attorney for the Commission, Robert Borgmann, was hired in June 2004.

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 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 in the reimbursement program continued to grow.

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. Increased county participation resulted in the total dollar amount of claims exceeding the amount available in the Fund to pay the claims. However, because of a bookkeeping error, it was not apparent at the time that the Fund had insufficient funds on hand with which to pay the claims in full. As a consequence, payment was made in full, when payment should have been made on a prorated basis.

Chairman Lefstein met with legislative leaders, who were provided projections and background material regarding the Commission's needs. 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 million for fiscal year 2002-03. In 2003-2004, Chairman Lefstein again met with legislative leaders, and in 2004, the General Assembly approved an increase in the Commission's appropriation to \$8.0 million in 2004-05 and \$9.0 million in 2005-06. This appropriation was helpful in accommodating the 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. That year also saw suspension of noncapital claims. In June 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's 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 has provided a more orderly and predictable report schedule.

In FY 2003-04, three additional counties, Allen, Grant, and Tippecanoe, became eligible for reimbursement, at the end of FY 2003-2004, fifty-three counties were eligible for reimbursement.

Attached as Appendix A is a table showing the counties that are eligible for state reimbursement in non-capital cases.

#### V. PUBLIC DEFENSE FUND (IC 33-40-6)

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 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 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 was increased to \$6 million, with the appropriation for the following fiscal year set at \$7 million. The balance in the fund on June 30, 2002, was depleted due to the proration of previously suspended claims. By the close of fiscal year 2002-2003, the fund balance was once again positive (See, "Fiscal Report," Appendix B).

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 \$38,445,000 million for judges' salaries and \$17,300,000 million for prosecutors' 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 its 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 is used for reimbursing counties for 40% of their expenditures in non-capital cases.

In FY 2003-04, the Commission reimbursed counties \$478,221 for expenditures in capital cases. Appendix C is a table showing reimbursements to counties in capital cases. In FY 2003-04, the Commission reimbursed counties \$6,029,926 for expenditures in non-capital cases. Total noncapital reimbursements would have been \$8,268,245, but the Commission,

which would normally meet in June 2004, did not meet until July 2004 and the

reimbursement claims for the quarter were not paid until after the beginning of FY 2004-2005. Payment was made in July 2004 from amounts received by the Public Defense Fund on June 30, 2003, and July 1, 2003. Appendix D is a table showing reimbursements to counties in non-capital cases.



## APPENDIX A

County Eligibility Status for Reimbursement in Non-capital Cases as of October 2004:

County	Ordinance Adopted	P.D. Board Established	Comprehensive Plan Adopted	Plan Approved By Commission
ADAMS	X	X	X	X
ALLEN	X	X	X	X
BENTON	*	*	X	X
BLACKFORD	X	X	X	X
CARROLL	X	X	X	X
CLARK	X	X	X	X
CRAWFORD	*	*	X	X
DECATUR	X	X	X	X
FAYETTE	X	X	X	X
FLOYD	X	X	X	X
FOUNTAIN	X	X	X	X
FULTON	X	X	X	X
GRANT	X	X	X	X
GREENE	X	X	X	X
HANCOCK	X	X	X	X
HENRY	X	X	X	X
JASPER	X	X	X	X
JAY	X	X	X	X
JENNINGS	X	X	X	X
KNOX	X	X	X	X
KOSCIUSKO	X	X	X	X
LAKE	X	X	X	X
LaPORTE	X	X	X	X
MADISON	X	X	X	X
MARION	X	X	X	X
MARTIN	*	*	X	X
MIAMI	X	X	X	X
MONROE	X	X	X	X
MONTGOMERY	X	X	X	X
NEWTON	X	X	X	X
NOBLE	X	X	X	X
OHIO	*	*	X	X
ORANGE	X	X	X	X
PARKE	X	X	X	X
PERRY	X	X	X	X
PIKE	X	X	X	X
PULASKI	X	X	X	X
RUSH	X	X	X	X
SCOTT	X	X	X	X
SHELBY	X	X	X	X
SPENCER	X	X	X	X
STEUBEN	X	X	X	X
SULLIVAN	X	X	X	X
SWITZERLAND	*	*	X	X
TIPPECANOE	X	X	X	X
UNION	*	*	X	X
VANDERBURGH	X	X	X	X

VERMILLION	X	X	X	X
VIGO	X	X	X	X
WARREN	*	*	X	X
WASHINGTON	X	X	X	X
WELLS	X			
WHITE	X	X	X	X
WHITLEY	X	X	X	X

\* Board not required for counties with populations under 12,000.

## APPENDIX B

### PUBLIC DEFENSE FUND Fiscal Report FY 2003-2004

Category	Allotted	Expended	Balance
1 Personal Services	57,751.07	57,751.07	0.00
2 Services other than personal	1,462.80	1,462.80	0.00
3 Services by Contract	739.94	739.94	0.00
4 Materials and Supplies	126.36	126.36	0.00
5 Equipment	0.00	0.00	0.00
6 Land and Structures	0.00	0.00	0.00
7 Grants, subsidies, refunds	6,904,474.14	6,904,474.14	0.00
8 In-state Travel	829.76	829.76	0.00
9 Out-of-state Travel	0.00	0.00	0.00
<b>TOTALS</b>	<u>6,965,384.07</u>	<u>6,965,384.07</u>	<u>0.00</u>
			0.00
Beginning Balance		1,173,648.00	
Allotment	6,965,384.07		
Unused Appropriation	<u>34,615.93</u>		
Total Appropriation		7,000,000.00	
Less Expenditures		<u>(6,965,384.07)</u>	
Fund Balance 6/30/04		1,208,263.93	

## APPENDIX C

Reimbursements in Capital Cases				
2003-2004				
COUNTY	DEFENDANT	PAID	SUBMITTED 4TH QUARTER 2003-04	TOTAL
		REIMBURSEMENTS	APPROVED JULY 28, 2004*	
Allen	Azania	\$36,426.29		\$36,426.29
Delaware	Verner	\$45,991.29	\$12,451.82	\$58,443.11
Lake	Aki-Khuam	\$0.00	\$3,554.92	\$3,554.92
	Azania	\$31,068.37	\$29,369.46	\$60,437.83
	Britt	\$11,563.62	\$3,711.25	\$15,274.87
	Jeter	\$0.00	\$7,909.65	\$7,909.65
	Maust	\$0.00	\$4,299.06	\$4,299.06
	Roche	\$0.00	\$7,727.60	\$7,727.60
Marion	Adams	\$0.00	\$2,887.10	\$2,887.10
	Barker	\$6,945.75		\$6,945.75
	Bomani	\$3,038.00		\$3,038.00
	Covington	\$16,557.83		\$16,557.83
	Dye	\$14,375.50	\$5,178.13	\$19,553.63
	Holland	\$0.00	\$12,424.25	\$12,424.25
	Ritchie	\$5,982.93		\$5,982.93
	Shannon	\$5,201.50		\$5,201.50
Morgan	Pruitt	\$265,649.56	\$13,204.10	\$278,853.66
Spencer	Ward	\$29,764.63		\$29,764.63
Vanderburgh	McManus	\$5,656.02	\$5,037.78	\$10,693.80
Total		\$478,221.29	\$107,755.12	\$585,976.41

\* Amounts were approved at the Indiana Public Defender Commission Meeting on July 28, 2004 for the period 1/01/04-3/31/04 and paid in September 2004.

# APPENDIX D

## NON-CAPITAL REMBURSEMENTS 2003-04

COUNTY	TOTAL NONCAPITAL CLAIMS 2003-2004 *	SUBMITTED 4TH QUARTER 03-04 APPROVED JULY 28, 2004	NONCAPITAL REIMBURSEMENT PAID 2003-2004
ADAMS	\$46,710.17	\$10,928.30	\$35,781.87
ALLEN	\$472,197.63	\$235,584.24	\$236,613.39
BENTON	\$25,366.72	\$6,873.07	\$18,493.65
BLACKFORD	\$17,998.50	\$4,712.40	\$13,286.10
CARROLL	\$37,242.80	\$9,460.08	\$27,782.72
CLARK	\$161,784.93	\$38,140.22	\$123,644.71
DECATUR	\$30,421.32	\$10,703.02	\$19,718.30
FAYETTE	\$86,482.38	\$36,124.74	\$50,357.64
FLOYD	\$116,997.38	\$26,755.78	\$90,241.60
FOUNTAIN	\$21,127.56	\$3,403.47	\$17,724.09
FULTON	\$43,178.73	\$13,023.09	\$30,155.64
GRANT	\$52,782.00	\$52,782.00	0.00
GREENE	\$87,224.56	\$19,833.86	\$67,390.70
HANCOCK	\$110,253.65	\$24,279.65	\$85,974.00
HENRY	\$102,483.33	\$22,897.48	\$79,585.85
JASPER	\$37,999.11	\$6,904.41	\$31,094.70
JAY	\$48,335.28	\$12,638.67	\$35,696.61
JENNINGS	\$30,478.60	\$6,149.21	\$24,329.39
KNOX	\$133,152.20	\$26,571.18	\$106,581.02
KOSCIUSKO	\$106,875.70	\$23,914.19	\$82,961.51
LAKE	\$1,109,960.00	\$267,829.82	\$842,130.18
LaPORTE	\$136,578.31	\$35,355.74	\$101,222.57
MADISON	\$575,137.95	\$145,392.52	\$429,745.43
MARION	\$2,462,609.30	\$656,227.17	\$1,806,382.13
MARTIN	\$37,651.34	0.00	\$37,651.34
MIAMI	\$106,682.51	\$24,078.23	\$82,604.28
MONROE	\$268,233.62	\$58,950.80	\$209,282.82
MONTGOMERY	\$60,510.34	\$11,710.50	\$48,799.84
NOBLE	\$76,795.95	\$18,952.85	\$57,843.10
OHIO	\$13,680.05	\$4,533.95	\$9,146.10
ORANGE	\$54,872.60	\$24,518.15	\$30,354.45
PARKE	\$24,797.41	\$6,036.28	\$18,761.13
PERRY	\$20,682.83	\$7,769.40	\$12,913.43
PIKE	\$75,122.64	\$42,899.86	\$32,222.78
PULASKI	\$32,729.52	\$6,343.82	\$26,385.70
RUSH	\$40,329.44	\$7,254.54	\$33,074.90
SCOTT	\$60,568.35	\$11,103.15	\$49,465.20
SHELBY	\$84,729.07	\$19,661.79	\$65,067.28
SPENCER	\$28,181.46	\$8,439.52	\$19,741.94
STEUBEN	\$85,568.94	\$20,946.78	\$64,622.16
SULLIVAN	\$30,502.36	\$5,757.39	\$24,744.97
SWITZERLAND	\$29,776.70	\$8,735.12	\$21,041.58
VANDERBURGH	\$578,744.29	\$130,205.11	\$448,539.18

VERMILLION	\$22,016.43	\$5,097.53	\$16,918.90
VIGO	\$351,320.03	\$87,274.06	\$264,045.97
WARREN	\$5,746.19	\$855.24	\$4,890.95
WASHINGTON	\$62,786.28	\$14,178.67	\$48,607.61
WHITE	\$7,126.50	0.00	\$7,126.50
WHITLEY	\$55,711.80	\$16,531.55	\$39,180.25
TOTAL	\$8,268,244.76	\$2,238,318.60	\$6,029,926.16

\* Total reimbursements submitted for FY 2003-2004, including reimbursements approved on July 28, 2004 and paid in FY 2004-2005.