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MEMORANDUM

TO: Chief Justice Randall T. Shepard
Governor Mitch Daniels
Hon. David C. Long, Senate President Pro Tempore
Hon. Richard D. Young, Senate Minority Leader
Hon. Robert L. Meeks, Chair, Appropriations Committee
Hon. Frank Mrvan, Jr., Ranking Minority Member, Appropriations Committee
Hon. Luke Kenley, Chair, Tax and Fiscal Policy Committee
Hon. Timothy D. Skinner, Ranking Min. Member, Tax and Fiscal Policy C'ee
Hon. B. Patrick Bauer, Speaker of the House
Hon. Brian C. Bosma, House Minority Leader
Hon. Bill Crawford, Chair, House Ways and Means Committee
Hon. Jeffrey K. Espich, Ranking Min. Member, House Ways and Means C'ee
Members of the Indiana General Assembly
Associate Justices of the Indiana Supreme Court

FROM: Norman Lefstein
Chairman

DATE: April 13, 2007

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

I am pleased to enclose the Annual Report of the Indiana Public Defender Commission for fiscal year 2005-2006. The report explains the manner in which defense services are provided in Indiana for those who have a constitutional right to counsel at government expense and contains a brief history of Commission activities since its establishment in 1990.

Indigent defense expenditures among the 50 states is periodically collected under the auspices of the American Bar Association (ABA) and published on an ABA website. The most

recent such data that has been collected is for 2005. If total spending and populations are considered, these data show that on a per capita basis Indiana ranks 43rd among the 50 states and the District of Columbia in total indigent defense expenditures. Only Arkansas, Louisiana, Mississippi, Missouri, North Dakota, South Carolina, Utah, and Texas lag behind our state. (See Table attached to “State and County Expenditures for Indigent Defense Services in Fiscal Year 2005,” dated December 2006, 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 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.” See GIDEON’S BROKEN PROMISE: AMERICA’S CONTINUING QUEST FOR EQUAL JUSTICE, page 38, available at www.indigentdefense.org.

In Indiana, the state’s 92 counties provide the majority of the more than \$42 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/)

The funds used by the Commission to reimburse Indiana counties are from the Public Defense Fund (a non-reverting state fund). When the monies available through the Public Defense Fund are inadequate to reimburse Indiana counties for *all* of their eligible indigent defense expenditures, the Commission’s statute requires that reimbursements be prorated. Now, every year, due to inadequate funding, the Commission must prorate reimbursements to Indiana counties and the deficiency is becoming more severe each year, as shown below:

- For FY 2004-2005, the appropriation for indigent defense was \$8 million; but eligible reimbursement requests from Indiana counties totaled \$10,466,408;
- For 2005-2006, the appropriation for indigent defense was \$10 million, but the eligible reimbursement requests from Indiana counties totaled \$11,807,857;
- For the current fiscal year – 2006-2007 – the appropriation for indigent defense is again \$10 million, but total eligible reimbursement requests from Indiana counties are expected to exceed \$15.5 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. This progress is clearly threatened, however, absent additional state funds in support of indigent defense. 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, and we believe that such services merit the full support of the state’s elected officials.

For its part, please be assured that the Commission is committed to improving the state’s system of indigent defense services. But we cannot do it alone. We need the help of the executive, judicial, and legislative branches of government.