

# STATE OF INDIANA



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Brazil

Senator Joseph C. Zakas  
Granger

30 South Meridian Street, Suite 500  
Indianapolis, Indiana 46204-3568

(317) 232-2542

Fax (317) 233-6586

[http://www.in.gov/judiciary/admin/pub\\_def/](http://www.in.gov/judiciary/admin/pub_def/)  
E-mail: [dneal@courts.state.in.us](mailto:dneal@courts.state.in.us)

## MEMORANDUM

**TO:** Governor Mitch Daniels  
Chief Justice Randall T. Shepard  
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 Minority Member, Tax and Fiscal Policy  
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 Minority Member, House Ways and Means  
All Members of the Indiana General Assembly  
All Associate Justices of the Indiana Supreme Court

**FROM:** Deborah Neal, Staff Counsel

**DATE:** April 3, 2008

**SUBJECT: 2006 Annual Report of the Indiana Public Defender Commission**

The Indiana Public Defender Commission's Annual Report for FY 2006-2007 provides an overview of the Public Defense Fund. The Commission's efforts during the past decade, in cooperation with the General Assembly and the Supreme Court, have contributed to important improvements in Indiana's system of indigent defense. 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 the Commission's activities since its establishment in 1990.

Indiana's 92 counties provide the majority of the more than \$60 million in tax dollars devoted to indigent defense. The Public Defense Fund distributed \$10 million in reimbursements for indigent defense in FY 06-07, easing the program counties' tax burden. Of the 92 counties, 57 have presented a Comprehensive Plan to the Commission to be a part of the Public Defense Fund program. Each Comprehensive Plan details a county's method for providing indigent defense services within the Commission's Standards. To date, 51 of the 57 counties request and receive reimbursement for their public defense expenses quarterly.

The Commission is authorized by statute to reimburse all 92 counties 50% of their defense expenditures in capital cases (death penalty). The 57 program counties may receive 40% of their defense expenditures in non-capital indigent felony and juvenile delinquency cases if the counties comply with the Commission's Standards for defense services. (The Commission Standards are available at our website: [www.in.gov/judiciary/admin/pub\\_def/](http://www.in.gov/judiciary/admin/pub_def/))

The money used by the Commission to reimburse Indiana counties is from the Public Defense Fund (a non-reverting state fund). When the monies available through the Public Defense Fund are inadequate to reimburse counties in the program for 40% of their eligible non-capital indigent defense expenditures, the Commission's statute requires that reimbursements be prorated. In 2006-2007, the Commission approved \$663,311.06 in death penalty defense claims and \$11,433,137.78 in non-capital indigent defense claims. Money appropriated for FY 07-08 was needed to finance a portion of the FY 06-07 reimbursements. Even then, reimbursement requests for two quarters of FY 06-07 had to be prorated for non-capital indigent defense claims – the fourth quarter of 2006 at 18.3% and the second quarter of 2007 at 39.2%. The prorating of requests for reimbursement at 18.3% in the fourth quarter of 2006 caused the lowest amount in the Public Defense Fund history to be returned to the program counties. Due to inadequate funds to support the promise to program counties of a 40% reimbursement for their indigent defense costs, Commission members, the Chief Justice of the Supreme Court, the Public Defense Council, the Chief Public Defenders, individual state senators and representatives and many others devoted to improving indigent defense services in Indiana contacted members of the General Assembly on behalf of the Public Defense Fund. The result was an increase in the state appropriation for the Public Defense Fund from \$10 million in FY 06-07 to \$14,500,000 million for FY 07-08, and \$15,250,000 for FY 08-09.

For its part, please be assured that the Commission is committed to improving the state's system of indigent defense services. But it cannot do it alone. The Commission needs the continued support of the executive, judicial, and legislative branches of government. While the Commission appreciates that these are difficult financial times for the State of Indiana, we believe that the state's improved adversarial system of indigent defense merits the full backing of the legislature. Unlike other state-funded programs, the provision of adequate counsel to the poor in criminal and juvenile cases is guaranteed to all persons as a matter of constitutional right.

The Commission looks forward to working with you in continuing the progress that has been made to improve the quality of indigent defense services in Indiana. One of the goals of the

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Indiana Public Defender Commission is to continue to find a way to provide to Indiana's counties the reimbursements for defense costs upon which they have come to rely, and to insure that indigent defense services are provided responsibly throughout the state.