

# STATE OF INDIANA



## PUBLIC DEFENDER COMMISSION

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## MEMORANDUM

**TO:** Governor Mike Pence  
Chief Justice Brent E. Dickson  
Hon. David C. Long, Senate President Pro Tempore  
Hon. Timothy Lanane, Senate Minority Leader  
Hon. Luke Kenley, Chair, Appropriations Committee  
Hon. John Broden, Ranking Minority Member, Appropriations Committee  
Hon. Brandt Hershman, Chair, Tax and Fiscal Policy Committee  
Hon. Timothy D. Skinner, Ranking Minority Member, Tax and Fiscal Policy  
Hon. Brian C. Bosma, Speaker of the House  
Hon. Scott Pelath, House Minority Leader  
Hon. Timothy Brown, Chair, House Ways and Means Committee  
Hon. Gregory W. Porter, Ranking Minority Member, House Ways and Means  
All Members of the Indiana General Assembly  
All Associate Justices of the Indiana Supreme Court

**FROM:** Mark Rutherford, Chairman

**DATE:** August 2013

**SUBJECT: 2012-2013 Annual Report of the Indiana Public Defender Commission**

The Indiana Public Defender Commission's Annual Report for FY 2012-2013 provides an overview of the Public Defense Fund. The Commission's efforts during the past twenty-three years, in cooperation with the General Assembly and the Indiana 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.

The Commission is authorized by statute to reimburse all 92 counties 50% of their defense expenditures in capital cases (death penalty). The Public Defense Fund's participating counties may receive reimbursement up to 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's Standards are available at our website: [www.courts.in.gov/pdc](http://www.courts.in.gov/pdc).

Of the state's 92 counties, 61 have presented a Comprehensive Plan to the Commission to participate in the Public Defense Fund reimbursement program. To date, 53 of the participating counties request and receive reimbursement for their non-capital indigent defense expenses quarterly. These 53 counties represent over 68% of Indiana's population. The state, through the Public Defense Fund, returned in excess of \$17.9 million to the counties this fiscal year, easing somewhat their tax burden. This reimbursement from the Fund is the only state assistance given to the counties for their indigent defense expenditures. In contrast, the state contributes approximately \$61 million for trial judges' salaries and pensions, special judges and court operations, and \$28 million for prosecutors' salaries and benefits. Indiana's 92 counties provide the majority of the more than \$71 million in tax dollars spent on indigent defense.

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 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. From 2002 to 2009, county reimbursements averaged 33% due to prorating. In FY2012-2013, the qualifying counties received the full 40% reimbursement on non-capital public defense expenses.

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 thanks the judicial and legislative branches of government for their past support of the public defense reimbursement program. With the Public Defense Fund appropriation of \$22.2 million in FY13-14 and FY 14-15, the Commission will be able to continue returning the full 40% of a county's request for reimbursement of indigent defense costs.

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. The goals of the Indiana Public Defender Commission include continuing to find a way to provide to Indiana's counties the reimbursements for defense costs upon which they have come to rely, and insuring that indigent defense services are provided responsibly throughout the state.