

STATE OF INDIANA



Norman Lefstein, Chairman
Indianapolis

Senator Richard D. Bray
Martinsville

Susan Carpenter
Indianapolis

Hon. Daniel F. Donahue
Clark Circuit Court

Les Duvall
Indianapolis

Representative Ralph M. Foley
Martinsville

Monica Foster
Indianapolis

Bettye Lou Jerrel
Evansville

Senator Timothy S. Lanane
Anderson

Rebecca S. McClure
Lebanon

Representative Greg Porter
Indianapolis

PUBLIC DEFENDER COMMISSION

115 West Washington Street, Suite 1080
Indianapolis, Indiana 46204-3466

(317) 232-2542

Fax (317) 233-6586

E-mail: tcarusil@courts.state.in.us

MEMORANDUM

TO: Hon. Lawrence Borst, Chair, Senate Finance Committee
Members of the Senate Finance Committee

FROM: Norman Lefstein
Chairman

SUBJ: Indiana Public Defender Commission Budgets for
FY 2003-2004 and 2004-2005

DATE: February 5, 2003

During the past decade, in cooperation with the General Assembly and the Supreme Court, the Indiana Public Defender Commission has been able to achieve significant improvements in Indiana's system of indigent defense. In fact, Indiana's success is often cited as a national model illustrating how a state can enhance its defense services for the poor. Recent experiences from other states, moreover, have demonstrated the vital importance of furnishing well qualified, competent counsel to indigent defendants in order to assure fair trials and to avoid wrongful convictions of innocent persons.

Regrettably, Indiana's progress in the criminal justice area is threatened unless the annual appropriation for the Public Defense Fund (hereafter the "Fund"), which is administered by the Public Defender Commission, is increased. The budget submitted by the Supreme Court on behalf of the Commission requested for the Fund \$8,824,640 for FY 2003-2004 and \$9,486,640 for FY 2004-2005. The Budget Agency has

recommended continuation of the Fund's current fiscal year budget of \$7,000,000 for each of the next two fiscal years.

In accordance with Indiana law, the Commission reimburses Indiana counties 50% of their indigent defense costs in death penalty cases if counties comply with Indiana Supreme Court rules; and 40% of defense costs are reimbursed in non-capital cases if counties comply with Commission standards. If there are insufficient monies in the Public Defense Fund, reimbursements to counties are prorated.

The Fund's appropriation was \$6 million for the 2001-2002 fiscal year. **Column A** of the attached spreadsheet shows that during the fiscal year claims for 40% reimbursements in non-capital cases, from 46 counties with Commission-approved plans, exceeded \$6.9 million. Death penalty cases, which are accorded priority in reimbursements from the Fund pursuant to statute, totaled \$473,317. Since there were insufficient funds to pay all non-capital claims, reimbursements to these counties were prorated. Obviously, this creates difficulties for the counties because they have relied upon reimbursements from the Fund in planning their budgets.

For fiscal year 2002-2003, the Fund's appropriation was increased to \$7 million. However, *even without any new counties applying for reimbursements for non-capital cases*, this increased appropriation will once again almost certainly be insufficient to avoid prorating non-capital claims. As shown in **Column B** of the spreadsheet, the projected expenses from the Fund for fiscal year 2002-2003 will exceed \$7.2 million.

In planning for 2003-2004, we expect that additional counties will qualify for reimbursements in non-capital cases. As shown in **Column C**, if the number of counties with approved plans for reimbursements in non-capital cases reaches 60, we estimate that the appropriation for the Fund will need to be at least \$8,822,516 to avoid prorating claims. Our current estimate for reimbursing all of Indiana's 92 counties, as shown in **Column D**, is \$11,219,000.

While the Commission fully 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 legislature's support. Unlike other state-funded programs, the provision of adequate counsel for the poor in criminal and juvenile cases is guaranteed to all persons as a matter of constitutional right. Therefore, we hope that it will be possible for the state to increase substantially during the next two fiscal years the \$7 million budget figure for the Fund recommended by the Budget Agency.

Honorable Randall T. Shepard
Members, Indiana Public Defender Commission