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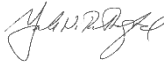
Public Defender Commission

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Hon. Steven P. Meyer
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MEMORANDUM

TO: Governor Eric J. Holcomb
Lieutenant Governor Suzanne Crouch
Chief Justice Loretta H. Rush
All Associate Justices of the Indiana Supreme Court
Sen. Rodric Bray, Senate President Pro Tempore
Sen. Timothy Lanane, Senate Minority Leader
Sen. Ryan Mishler, Chair, Senate Appropriations Committee
Sen. Karen Tallian, Ranking Minority Member, Senate Appropriations Committee
Rep. Brian Bosma, Speaker of the House
Rep. Phil GiaQuinta, House Minority Leader
Rep. Timothy Brown, Chair, House Ways and Means Committee
Rep. Gregory Porter, Ranking Minority Member, House Ways and Means Committee
All Members of the Indiana General Assembly

FROM: Mark Rutherford, Chairman 

DATE: December 2018

SUBJECT: **2017-2018 Annual Report of the Indiana Public Defender Commission**

The Indiana Public Defender Commission's Annual Report for Fiscal Year 2017-2018 provides an overview of the purpose and use of the Public Defense Fund. For the prior 28 years, the Commission, in cooperation with the General Assembly and the Indiana Supreme Court, has established and revised its standards for public defense services in both death penalty and non-death penalty cases. The report contains a brief history of the Commission, its responsibilities, and its reimbursements.

The Commission is authorized by statute to reimburse all 92 counties for 50% of their defense expenditures in capital (death penalty) cases. The Public Defense Fund's participating counties may also receive reimbursement of up to 40% of their defense expenditures in non-capital public felony, juvenile delinquency, and Children in Need of Services and Termination of Parental Rights (CHINS/TPR) cases if the counties comply with the Commission's Standards for defense services. The Commission's standards are always available online at: www.in.gov/publicdefender.

The Commission is pleased to report that a record 60 counties requested and received reimbursement for their non-capital public defense expenses during the fiscal year - representing over two-thirds of Indiana's

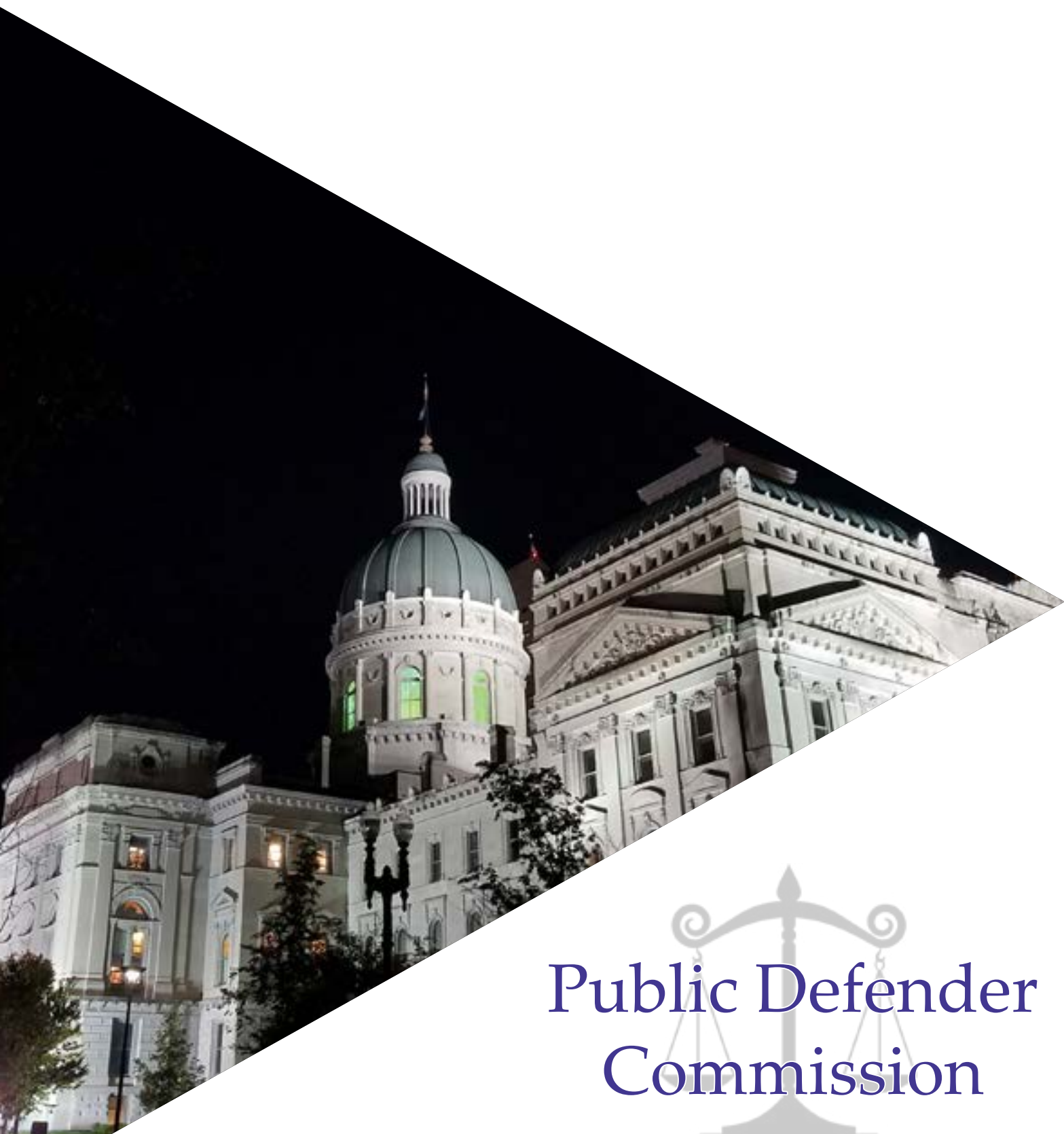
population. County non-capital public defense expenses continue to increase. During this time, the State of Indiana, through the Public Defense Fund, returned in excess of \$25 million to the counties for these expenses, easing their budget burden. The Commission also authorized over \$256,000 in death penalty reimbursement. Total county public defense expense reimbursement exceeded a record \$25 million.

The Commission is grateful that the Public Defense Fund's appropriation was increased in the 2017 Legislative Session to accommodate additional reimbursement obligations. This funding is the only state assistance provided to the counties for their public defense expenditures. In contrast, the state historically contributes over \$70 million for trial judge salaries and benefits and \$31 million for prosecutor salaries and benefits annually. Indiana's 92 counties are directly responsible for the majority of the more than \$98 million in tax dollars spent on public defense in Indiana each year.

In response to national critiques of Indiana's public defense system in recent years, in 2017-2018 the Commission assembled the Task Force on Public Defense, chaired by Judge John Tinder (7th Circuit, Ret.) and included 16 other members from all three branches of government, as well as various other stakeholder groups. The group conducted a yearlong study and developed a report, released in the Fall of 2018 and located on our website, which includes numerous findings and recommendations. The Commission has since received the report and adopted numerous of its recommendations. Specifically, the Commission will seek legislative change in the upcoming 2019 session to reimburse misdemeanor expenses, create an office to provide state-level support of public defense appeals, change county public defender board composition, and formally allow for the optimization of public defense services by allowing for reimbursement if counties choose to regionalize public defense services.

The Commission looks forward to working with you to continue the progress that has been made to improve the quality of public defense services in Indiana. The goals of the Indiana Public Defender Commission include continued reimbursement to Indiana's counties for the public defense costs upon which they have come to rely while ensuring adequate and responsible public defense services throughout the state.

Thank you for your continued commitment to guarantee the constitutional rights of Indiana's residents. Please do not hesitate to contact us to provide any additional information at any time.



Public Defender Commission

2017-2018 ANNUAL REPORT

Introduction

Long before the United States Supreme Court's historic right to counsel case of Gideon v. Wainwright in 1963, Indiana recognized the right to counsel in the case of Webb v. Baird. In 1854, the Supreme Court of Indiana recognized the right to a publicly paid attorney for persons facing incarceration who could not otherwise afford an attorney. This made Indiana the first state in the Union to recognize such a right. The burden of providing representation in Indiana has historically fallen upon each individual county. At the same time, the right to counsel is much more than just a technical requirement—it is the right to have a competent attorney who can protect the rights of each individual citizen to the fullest extent of the law. In order to assist counties with the financial burden of providing quality representation, the Indiana General Assembly created the Indiana Public Defender Commission. The burden of providing representation in Indiana has

Commission Members

As the law was originally written, the Commission had seven members: three appointed by the Governor; three appointed by the Chief Justice 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, ensuring adequate representation from all branches of the government. The following is a list of the Commission members, and their cities of residence, as of the close of the fiscal year:

Name	City	Appointed by
Mark W. Rutherford, Chairman	Indianapolis	Governor
Richard Bray	Martinsville	Governor
David J. Hensel	Indianapolis	Governor
Hon. Mary Ellen Diekhoff	Bloomington	Chief Justice
Hon. Kelsay B. Hanlon	Spencer	Chief Justice
Hon. Steven P Meyer	Lafayette	Chief Justice
Larry Landis	Indianapolis	Criminal Justice Institute
Rep. Ryan Dvorak	South Bend	Speaker of the House
Rep. Thomas Washburne	Darmstadt	Speaker of the House
Sen. Eric Koch	Bedford	Senate President Pro Tempore
Sen. Gregory G. Taylor	Indianapolis	Senate President Pro Tempore

Statutory Duties

In response to serious concerns regarding the quality of publicly appointed defense attorneys in death penalty cases, the legislature created the Indiana Public Defender Commission in 1989 by P.L. 284-1989. In 1993, the legislature realized that the funding and quality of representation in non-death penalty cases was also a concern. Accordingly, it amended the Commission's statute in P.L. 283-1993. The Commission is now authorized to reimburse counties for 50% of their public defense services in death penalty cases and 40% in non-death penalty cases, excluding misdemeanors.

These changes resulted in the current version of I.C. 33-40-5-4, where the Commission is mandated to:

1. Make recommendations to the Indiana Supreme Court concerning standards for public 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 public defendants at public expense.
- c. Determining conflicts of interest.
- d. Investigative, clerical, and other support services necessary to provide adequate legal representation.

3. Make recommendations concerning the delivery of public defense services in Indiana.

2. Adopt guidelines and standards for public 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 public defendants at public expense.
- e. Minimum and maximum caseloads of public defender offices and contract attorneys.

4. Make an annual report to the Governor, the General Assembly, and the Supreme Court on the operation of the Public Defense Fund.

Commission Timeline

1989

The Legislature creates the Public Defender Commission and authorizes reimbursement at the rate of 50%

1990

Commission holds first meeting

1991

Commission adopts guidelines for counties to receive reimbursement for its public defense services

1992

Death penalty defense reimbursement begins

1993

Legislature authorizes reimbursement of 25% of participating county's non-death penalty defense costs

1994

Commission adopts standards and guidelines that a county must follow to receive reimbursement

1995

Reimbursement begins on non-death penalty cases

1997

Legislature raises non-death penalty reimbursement to 40% but makes misdemeanor expenses non-reimbursable

2002

Over \$2M in non-capital reimbursements lost due to proration

2003

Over \$1.6M in non-capital reimbursements lost due to proration

2004

Over \$1.4M in non-capital reimbursements lost due to proration

2005

Over \$700k in non-capital reimbursements lost due to proration

2006

Over \$800k in non-capital reimbursements lost due to proration

2007

Over \$2.6M in non-capital reimbursements lost due to proration

2008

Over \$800k in non-capital reimbursements lost due to proration

2009

Over \$1.2M in non-capital reimbursements lost due to proration

2010

Prorating of reimbursement ends after multiple increases in funding

2012

Hourly rate for appointed counsel rises from \$60 to \$70 in non-capital cases

2013

Additional funding allows for Children in Need of Services and Termination of Parental Rights cases to be reimbursable

2016

Record county participation with 57 counties in compliance

2017

Hourly rate for appointed counsel rises to \$90 in non-capital cases and \$120 in capital cases

2018

Task Force on Public Defense completes year-long study focusing on recommendations for reform in public defense delivery and financial structure

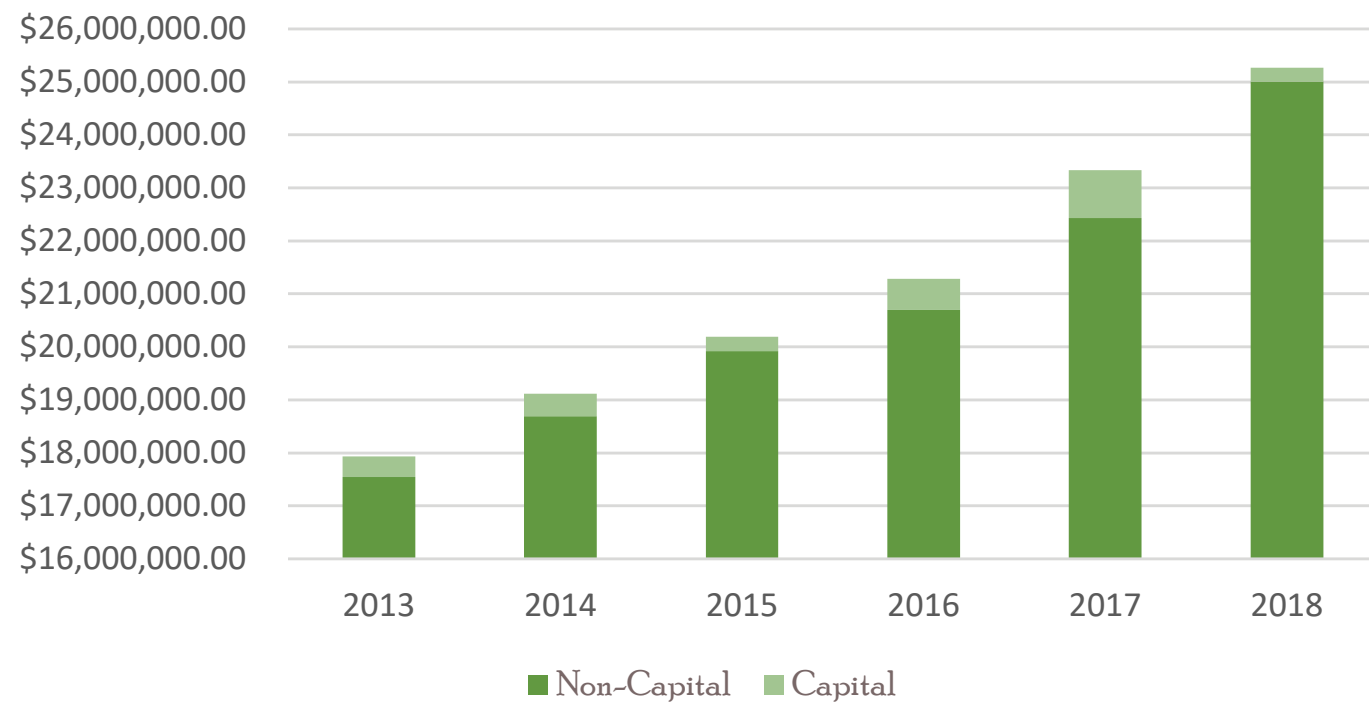
2018

Reimbursement requests for non-capital cases exceed \$25M to 60 participating counties

REIMBURSEMENT HISTORY

County	Total Reimbursement
ADAMS	\$1,426,501.83
ALLEN	\$17,191,388.46
BENTON	\$330,866.25
BLACKFORD	\$712,535.13
BOONE	\$276,950.51
BROWN	\$205,708.25
CARROLL	\$742,262.76
CASS	\$850,859.54
CLARK	\$4,462,340.97
DAVISS	\$6,150.00
DECATUR	\$803,712.23
DEKALB	\$471,844.53
DELAWARE	\$3,767,994.72
ELKHART	\$99,831.80
FAYETTE	\$1,828,373.09
FLOYD	\$4,422,690.45
FOUNTAIN	\$603,817.44
FULTON	\$1,277,458.65
GIBSON	\$40,865.05
GRANT	\$4,389,352.71
GREENE	\$1,955,892.59
HAMILTON	\$230,965.24
HANCOCK	\$2,431,137.70
HARRISON	\$823,472.27
HENDRICKS	\$324,674.93
HENRY	\$850,310.06
HOWARD	\$5,437,549.39
JACKSON	\$677,339.32
JASPER	\$1,188,935.51
JAY	\$1,401,577.76
JEFFERSON	\$409,268.04
JENNINGS	\$1,045,528.86
JOHNSON	\$217,557.21
KNOX	\$3,131,163.29
KOSCIUSKO	\$2,478,971.78
LaGRANGE	\$481,759.92
LAKE	\$24,643,533.67
LaPORTE	\$3,833,850.58
LAWRENCE	\$1,819,872.90
MADISON	\$11,236,708.33
MARION	\$90,221,740.69
MARTIN	\$606,532.94
MIAMI	\$648,852.85
MONROE	\$7,916,941.25
MONTGOMERY	\$1,080,445.33
MORGAN	\$511,283.37
NOBLE	\$2,295,886.51
OHIO	\$354,386.88
ORANGE	\$1,329,981.77
OWEN	\$292,736.56
PARKE	\$1,133,461.81
PERRY	\$1,023,174.21
PIKE	\$1,079,688.31
PORTER	\$83,653.84
POSEY	\$75,447.10
PULASKI	\$942,028.63
PUTNAM	\$128,306.40
RANDOLPH	\$25,308.56
RIPLEY	\$299,534.83
RUSH	\$1,086,356.20
ST. JOSEPH	\$8,011,301.84
SCOTT	\$515,748.51
SHELBY	\$2,213,379.44
SPENCER	\$1,098,238.74
STEUBEN	\$1,607,123.89
SULLIVAN	\$690,396.57
SWITZERLAND	\$857,212.26
TIPPECANOE	\$8,218,214.04
UNION	\$315,126.11
VANDEBURGH	\$12,970,420.84
VERMILLION	\$775,053.34
VIGO	\$9,004,323.94
WABASH	\$941,222.45
WARREN	\$222,784.51
WARRICK	\$385,282.18
WASHINGTON	\$1,941,855.75
WHITE	\$32,777.70
WHITLEY	\$213,243.89
TOTAL	\$269,681,027.76

Reimbursement Trends



County Non-Capital Public Defense Spending as reported to Commission

\$72,614,358

2018 Capital Reimbursements

County	Defendant	September 2017 Q2	December 2017 Q3	March 2018 Q4	June 2018 Q1	Total
Boone	Wright				\$27,228.59	\$27,228.59
Clark	Oberhansley	\$ 9,569.36	\$ 13,865.19			\$23,434.55
Harrison	Schuler - Appeal	\$ 6,955.63	\$ 9,140.24			\$16,095.87
Lake	Vann	\$34,574.08	\$ 29,753.25	\$14,963.25	\$19,413.83	\$98,704.41
Marion	Cruz	\$24,536.10				\$24,536.10
Marion	Davis	\$ 6,945.51	\$ 18,732.96			\$25,678.47
St. Joseph	Kubsch				\$41,218.16	\$41,218.16
Total						\$256,896.15

Funding and Reimbursement History

Fiscal Year	# of Counties Eligible for Reimbursement	Annual Appropriation to PDCOM Fund	Reimbursement Paid in Capital Cases	Reimbursements Paid in Non-Capital Cases	Total Reimbursement Paid	Loss due to prorated reimbursement	% of reimbursement received
1989-90		\$ 650,000			\$ -		
1990-91		\$ 650,000	\$ 58,550		\$ 58,550		
1991-92		\$ 650,000	\$ 286,805		\$ 286,805		
1992-93		\$ 650,000	\$ 484,501		\$ 484,501		
1993-94		\$ 650,000	\$ 337,139		\$ 337,139		
1994-95		\$ 650,000	\$ 288,465		\$ 288,465		
1995-96	5	\$ 650,000	\$ 528,641	\$ 668,747	\$ 1,197,388		
1996-97	7	\$ 650,000	\$ 371,046	\$ 628,841	\$ 999,887		
1997-98	9	\$ 3,000,000	\$ 799,450	\$ 1,022,104	\$ 1,821,554		
1998-99	17	\$ 3,000,000	\$ 526,515	\$ 2,188,701	\$ 2,715,216		
1999-00	30	\$ 2,400,000	\$ 378,209	\$ 2,990,954	\$ 3,369,163		
2000-01	38	\$ 2,400,000	\$ 712,054	\$ 3,669,319	\$ 4,381,373		
2001-02	50	\$ 6,000,000	\$ 473,317	\$ 4,869,313	\$ 5,342,630	\$ 2,036,380	28%
2002-03	50	\$ 7,000,000	\$ 413,805	\$ 5,371,364	\$ 5,785,169	\$ 1,619,285	31%
2003-04	52	\$ 7,000,000	\$ 478,222	\$ 4,553,537	\$ 5,031,759	\$ 1,403,053	25%
2004-05	53	\$ 8,000,000	\$ 672,381	\$ 11,026,803	\$ 11,699,184	\$ 771,538	37%
2005-06	53	\$ 9,000,000	\$ 386,288	\$ 5,824,921	\$ 6,211,209	\$ 895,476	36%
2006-07	54	\$ 10,000,000	\$ 844,769	\$ 12,147,454	\$ 12,992,223	\$ 2,674,834	31%
2007-08	53	\$ 14,500,000	\$ 753,772	\$ 14,162,897	\$ 14,916,669	\$ 825,367	38%
2008-09	48	\$ 15,250,000	\$ 742,251	\$ 14,325,105	\$ 15,067,356	\$ 1,262,700	37%
2009-10	50	\$ 18,250,000	\$ 618,252	\$ 15,373,384	\$ 15,991,636		40%
2010-11	52	\$ 18,250,000	\$ 370,709	\$ 15,996,714	\$ 16,367,423		40%
2011-12	53	\$ 20,250,000	\$ 532,706	\$ 16,685,482	\$ 17,218,188		40%
2012-13	53	\$ 20,250,000	\$ 381,459	\$ 17,546,818	\$ 17,928,277		40%
2013-14	54	\$ 22,250,000	\$ 421,935	\$ 18,693,834	\$ 19,115,769		40%
2014-15	55	\$ 22,250,000	\$ 268,182	\$ 19,923,237	\$ 20,191,418		40%
2015-16	57	\$ 22,257,668	\$ 590,939	\$ 20,695,801	\$ 21,286,740		40%
2016-17	58	\$ 22,250,000	\$ 896,287	\$ 22,435,660	\$ 23,331,946		40%
2017-18	62	\$ 25,750,000	\$ 256,896	\$ 25,006,493	\$ 25,263,389		40%
TOTALS		\$ 284,507,668	\$ 13,873,545	\$ 255,807,484	\$ 269,681,027	\$ 11,488,633	

“Both the United States and Indiana Constitutions guarantee that all persons accused of crimes are entitled to representation by counsel in facing the consequence of those charges, even if they cannot afford the expense of that representation. This is a matter of right, not charity or enlightened benevolence. The right to counsel gives meaning and substance to all of the other rights that are central to our Constitutions.”

-Judge John D. Tinder (7th Circuit Court of Appeals – Ret.)
Chair, Indiana Task Force on Public Defense

Non-Capital Reimbursements

2017-2018

