



INDIANA
**PUBLIC
DEFENDER**

COMMISSION

ANNUAL REPORT | 2015-2016



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.

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 |
| David J. Hensel | Indianapolis | Governor |
| Hon. James R. Ahler | Rensselaer | Chief Justice |
| Hon. Mary Ellen Diekhoff | Bloomington | 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. Bill Fine | Highland | Speaker of the House |
| Sen. Brent Steele | 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 indigent 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 do the following:

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

2. Adopt guidelines and standards for indigent defense services under which counties are eligible for reimbursement under IC 33-40-6, including the following:

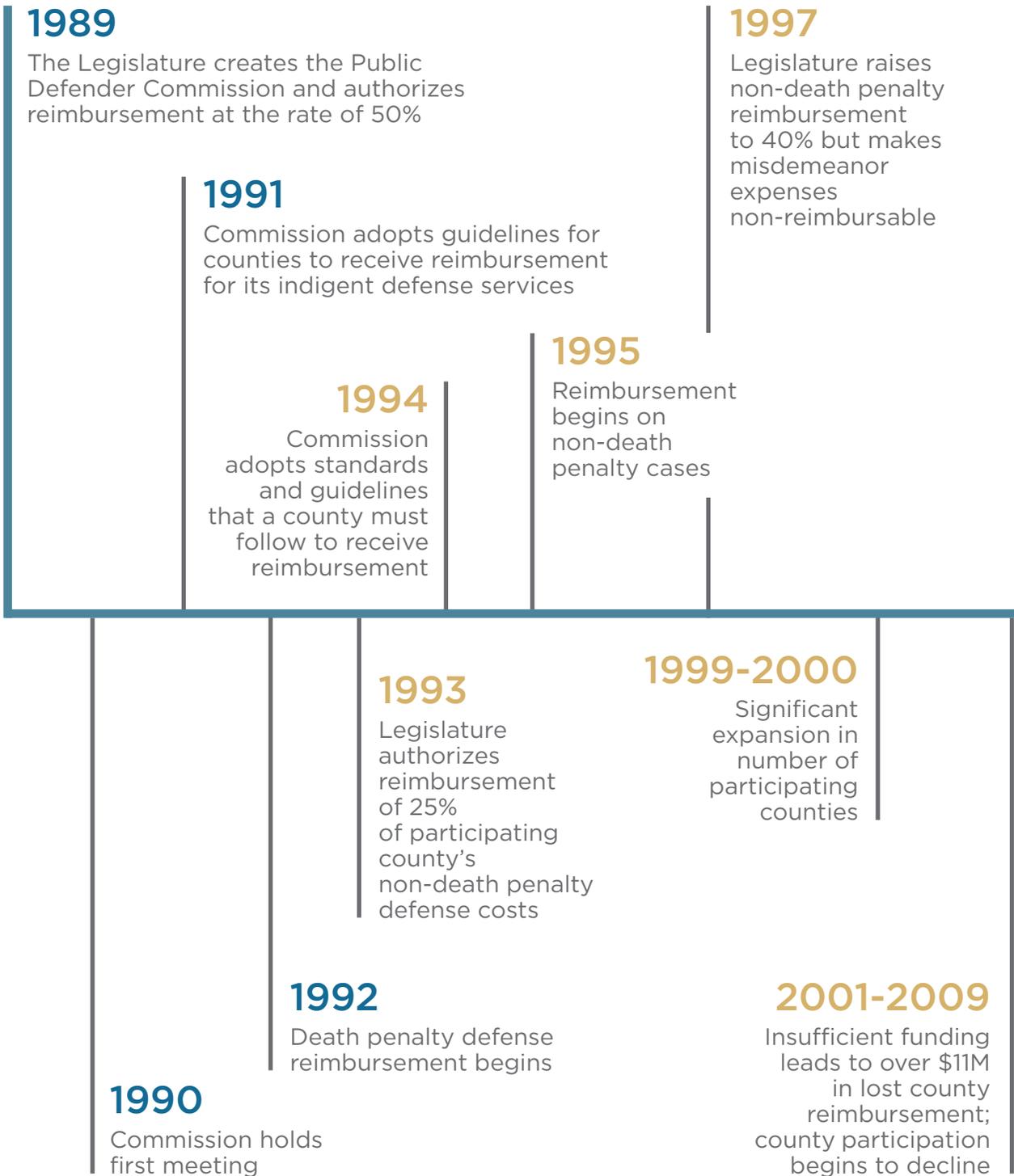
- (E) Determining indigency and the eligibility for legal representation.
- (F) The issuance and enforcement of orders requiring defendants to pay for the costs of court appointed legal representation under IC 33-40-3.
- (G) The use and expenditure of funds in the county supplemental public defender services fund established by IC 33-40-3-1.
- (H) Qualifications of attorneys to represent indigent defendants at public expense.
- (I) Minimum and maximum caseloads of public defender offices and contract attorneys.

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

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

PUBLIC DEFENDER

REIMBURSEMENT TIMELINE



Capital (Death Penalty) Reimbursement



Non-Capital Reimbursement

The Public Defense Fund is the only source of property tax relief for counties fulfilling the government's constitutional obligation to provide adequate indigent defense services.

2010

Prorating of reimbursement ends after multiple increases in funding

2012

Hourly rate for appointed counsel rises from \$60 to \$70

2017

Hourly rate for appointed counsel rises to \$90

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 \$120

At the close of Fiscal Year 2016 approximately 10 counties were considering joining the Commission's reimbursement program

County Public Defender Boards maintain local control over how indigent defense will be provided in participating counties

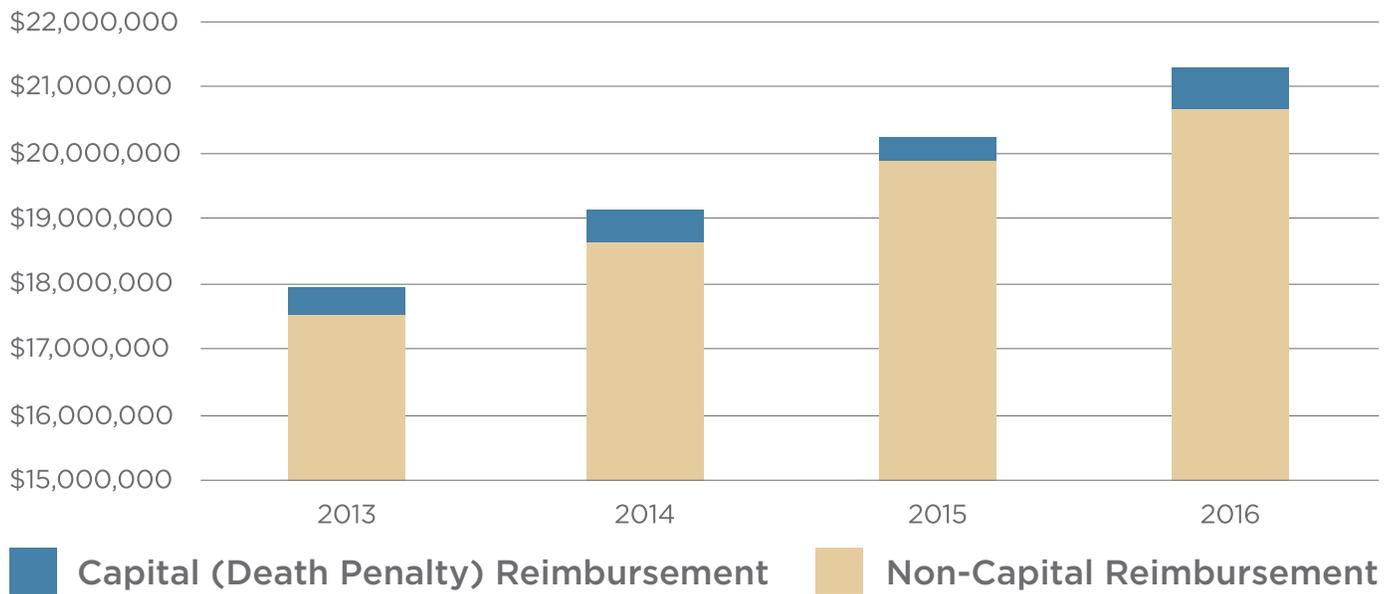
The Commission has historically kept administrative expenses at or below 1% of the Public Defense Fund

Funding and Reimbursement History

* Denotes that totals reflect reimbursements approved for payment by the Commission during the particular fiscal year; totals in other years reflect actual amount reimbursed during the fiscal year.

| Fiscal Year | # of Counties Eligible for Reimbursement | Annual Appropriation to PD Fund | Reimbursement Paid in Capital Cases | Reimbursement Paid in Non-Capital Cases | Total Reimbursement Paid | Loss due to prorated reimbursement | % of reimbursement received |
|---------------|--|---------------------------------|-------------------------------------|---|--------------------------|------------------------------------|-----------------------------|
| 1989-90 | | \$650,000 | | | | | |
| 1990-91 | | \$650,000 | \$40,795 | | \$27,277 | | |
| 1991-92 | | \$650,000 | \$320,697 | | \$316,297 | | |
| 1992-93 | | \$650,000 | \$480,716 | | \$435,752 | | |
| 1993-94 | | \$650,000 | \$333,020 | | \$382,328 | | |
| 1994-95 | | \$650,000 | \$288,450 | | \$261,945 | | |
| 1995-96 | 5 | \$650,000 | \$529,472 | \$668,747 | \$1,173,912 | | |
| 1996-97 | 7 | \$650,000 | \$370,959 | \$628,841 | \$999,888 | | |
| 1997-98 | 9 | \$3,000,000 | \$799,449 | \$1,031,467 | \$1,830,917 | | |
| 1998-99 | 17 | \$3,000,000 | \$526,525 | \$2,188,699 | \$2,715,211 | | |
| 1999-00 | 30 | \$2,400,000 | \$378,209 | \$3,302,471 | \$3,680,680 | | |
| 2000-01 | 38 | \$2,400,000 | \$712,054 | \$3,669,318 | \$4,381,373 | | |
| 2001-02 | 50 | \$6,000,000 | \$473,317 | \$4,869,314 | \$5,342,631 | \$2,036,380 | 28.2% |
| 2002-03 | 50 | \$7,000,000 | \$413,805 | \$5,371,364 | \$5,785,169 | \$1,619,285 | 30.7% |
| 2003-04 | 52 | \$7,000,000 | \$478,222 | \$6,030,992 | \$6,601,465 | \$1,403,053 | 25.1% |
| 2004-05 | 53 | \$8,000,000 | \$672,381 | \$8,524,652 | \$9,096,150 | \$771,538 | 36.9% |
| 2005-06 | 53 | \$9,000,000 | \$386,288 | \$7,305,318 | \$7,938,766 | \$895,476 | 35.6% |
| 2006-07 | 54 | \$10,000,000 | \$844,769 | \$10,175,448 | \$10,838,759 | \$2,674,834 | 30.9% |
| 2007-08 | 53 | \$14,500,000 | \$753,772 | \$13,586,669 | \$14,005,880 | \$825,367 | 38.4% |
| 2008-09 | 48 | \$15,250,000 | \$742,251 | \$14,411,615 | \$15,074,416 | \$1,262,700 | 37.0% |
| 2009-10 | 50 | \$18,250,000 | \$618,252 | \$15,376,845 | \$15,995,098 | \$0 | 40.0% |
| 2010-11 | 52 | \$18,250,000 | \$370,709 | \$15,707,861 | \$16,078,570 | \$0 | 40.0% |
| 2011-12 | 53 | \$20,250,000 | \$532,706 | \$20,722,547 | \$21,255,253 | \$0 | 40.0% |
| 2012-13* | 53 | \$20,250,000 | \$381,459 | \$17,546,818 | \$17,928,277 | \$0 | 40.0% |
| 2013-14* | 54 | \$22,250,000 | \$421,935 | \$18,693,834 | \$19,115,769 | \$0 | 40.0% |
| 2014-15* | 55 | \$22,250,000 | \$268,182 | \$19,923,236 | \$20,191,418 | \$0 | 40.0% |
| 2015-16* | 57 | \$22,250,000 | \$590,939 | \$20,695,802 | \$21,286,741 | \$0 | 40.0% |
| TOTALS | | \$236,500,000 | \$12,729,333 | \$210,431,858 | \$222,739,942 | \$11,488,533 | |

Recent Fiscal Year Reimbursement Trends



County Reimbursements for Indigent Defense Expenses (Capital) 2015-2016 Detail

| County | Defendant | 2015, Sept Q2 15 | 2015, Dec Q3 15 | 2016, Mar Q4 15 | 2016, June Q1 16 | Total |
|--------------|-------------|---------------------|---------------------|---------------------|--------------------|---------------------|
| Clark | Hooten | - | - | - | - | - |
| Clark | Oberhansley | \$14,086.22 | \$19,946.66 | \$22,980.31 | \$18,137.79 | \$75,150.98 |
| Floyd | Gibson 919 | - | - | - | - | - |
| Floyd | Gibson 1145 | \$7,211.67 | - | - | - | \$7,211.67 |
| Harrison | Schuler | \$72,293.03 | \$38,511.48 | - | - | \$110,804.51 |
| Harrison | Scott | \$52,749.22 | \$39,363.30 | - | - | \$92,112.52 |
| Lake | Blount | - | \$22,287.31 | \$11,816.70 | \$8,679.08 | \$42,783.09 |
| Lake | Isom | \$1,738.40 | \$185.50 | \$291.50 | \$148.40 | \$2,363.80 |
| Lake | Vann | - | \$41,330.11 | \$40,384.43 | \$26,922.91 | \$108,637.45 |
| Marion | Adams | - | \$245.00 | - | - | \$245.00 |
| Marion | Davis | \$21,201.98 | \$19,348.65 | \$25,480.94 | \$17,749.37 | \$83,780.94 |
| Marion | Rackemann | \$16,963.68 | \$9,150.05 | \$13,446.35 | \$3,179.25 | \$42,739.33 |
| Vanderburgh | Wesheit | - | - | \$25,109.67 | - | \$25,109.67 |
| Total | | \$186,244.20 | \$190,368.06 | \$139,509.90 | \$74,816.80 | \$590,938.96 |

