

The Public Defender System

Marion County, Indiana:

Current and Projected Costs

January 1980

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The Criminal Defense Technical Assistance Project
A Program of the Adjudication Division, Law Enforcement Assistance Administration, U.S. Department of Justice
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April 7, 1980

National Criminal Justice
Reference Service
P.O. Box 6000
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Dear Sir:

I am enclosing for your library one copy of our reports entitled "A Proposed Statewide Public Defender System for the State of West Virginia" and "The Public Defender System--Marion County, Indiana: Current and Projected Costs."

These reports were written in conjunction with our work on the Criminal Defense Technical Assistance Project supported by the Law Enforcement Assistance Administration, United States Department of Justice, Contract Number J-LEAA-008-79.

Yours truly,



Aleta Chamberlain

AC
Enclosures

Report No. 80-8

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The Public Defender System,
Marion County, Indiana:
Current and Projected Costs

Robert Rosenblum

Scott Harshbarger, Consultant

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ACQUISITIONS

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APPENDIX

1. INTRODUCTION

On October 2, 1979 the Criminal Defense Technical Assistance Project (Abt Associates) received authorization from the Law Enforcement Assistance Administration (LEAA) to provide technical assistance in response to a request from William Mercuri, Executive Director, Indiana Criminal Justice Planning Agency (SPA). LEAA has contracted with Abt Associates Inc., Cambridge, Massachusetts, to provide expert, professional services to state and local agencies or groups in response to requests for assistance which clearly seek to improve the quality of legal representation for indigent defendants. The request from the Indiana SPA specifically called for an assessment of the "quality and adequacy of defender services presently being provided in Marion County [and the feasibility] of a Marion County Public Defender Agency as legislatively proposed."

This request is the latest in a series of events pertaining to the study and reform of the Marion County public defender system. The following are some of the major events which have transpired in an ongoing process over the past four years.

- In early 1976 the Indianapolis Lawyers Commission formed a Public Defender Services Committee to examine existing defense services for indigents. This committee was created after the Commission's Bail Committee identified numerous deficiencies in the delivery of defense services to the criminally accused indigent in Marion County.
- After an examination of the existing defense services, the Indianapolis Lawyers Commission requested and received an LEAA grant from the Indiana Criminal Justice Planning Agency to have the National Center for Defense Management conduct an in-depth study of the Marion County public defender system. This report was submitted in October 1976 and recommended major reforms.
- During 1977 the Public Defender Services Committee continued to examine the public defender services in Marion County and other counties in Indiana and other states. In November of 1977, the Public Defender Services Committee submitted its recommendation to the Board of Directors of the Lawyers Commission that an independent agency be established in Marion County to provide representation to indigents in juvenile, misdemeanor and felony cases.
- During the first half of 1978, the Board of Directors of the Lawyers Commission discussed and revised the Committee's proposal. Eventually, a legislative proposal was adopted by

the Commission in June of 1978. In October 1978, the Board of Managers of the Indianapolis Bar Association adopted a resolution to support this legislation. The legislation was introduced in the last legislative session by Senator Duvall as Senate Bill 376.

- A unanimous subcommittee of the Senate Judiciary Committee recommended passage of S.B. 376. However, at the suggestion of some of the judges of the criminal division of the Marion County Superior Court, the Indianapolis Bar Association recommended withdrawal of S.B. 376 and the bill was withdrawn by Senator Duvall prior to a vote by the Senate.
- In response to the judges' request and the withdrawal of S.B. 376 the Indianapolis Bar Association established a Public Defender Committee to review the problems of indigent representation in Marion County and determine if the deficiencies in defender services could be adequately cured without legislation such as S.B. 376. The Public Defender Committee consists of members of the private bar, past and present public defenders and judges on the Marion County courts.
- The Public Defender Committee held several meetings between March 2, 1979 and June 26, 1979. On July 25, 1979 it submitted its interim report to the Bar Association's Board of Managers recommending legislation to create an independent Public Defender Agency for Marion County.
- In November 1979 the Board of Managers accepted the report of the Public Defender Committee and endorsed the proposed legislation in December 1979.

In response to the request by the Indiana SPA, two site visits were made by members of the Criminal Defense Technical Assistance Project. The first, or preliminary, site visit was conducted on October 23 and 24, 1979 by Dr. Robert Rosenblum and Mr. Robert Spangenberg. During this visit interviews were held to determine the nature and structure of the Marion County judicial system and to generally assess the public defender system. The second site visit in response to a follow-up request to assess the cost of the current public defender system and project the cost of the proposed system was conducted on December 5 and 6, 1979 by Dr. Robert Rosenblum and Mr. Scott Harshbarger.*

*Mr. Robert Spangenberg is a lawyer and Senior Research Associate at Abt Associates. He has extensive experience in the delivery of legal services to the poor. He is also Project Director of the Criminal Defense Technical Assistance Project (CDTAP). Dr. Robert Rosenblum is also a Senior Research Associate at Abt Associates. He is a lawyer and a Ph.D. in political science and is Deputy Project Director for CDTAP. Mr. Scott Harshbarger is serving as a consultant to Abt Associates and brings to this project considerable experience as a public defender and prosecutor. Mr. Harshbarger is currently General Counsel to the Massachusetts State Ethics Commission.

During this visit data were collected and additional interviews held in an effort to assess the cost of the current public defender system. In the course of these two visits the following individuals were interviewed:

Arnie Baratz, Public Defender in Judge Gifford's Court;
Valen S. Boring, Judge, Marion County Juvenile Court;
Walt Bravard, Chief Public Defender, Marion County Municipal Courts;
Webster Brewer, Judge, Marion County Superior Court, Criminal Division;
Ed Buckley, Deputy Auditor, Marion County;
Earl Coleman, Chief of Criminal Court Probation;
Charles Daugherty, Judge, Marion County Superior Court, Criminal Division;
Leslie Duvall, Senator, Chairman of the State Senate Judiciary Committee;
Patricia Gifford, Judge, Marion County Superior Court, Criminal Division;
Stephen Goldsmith, Prosecuting Attorney for Marion County;
Donald Hanson, Municipal Court, Manager of Court Programs;
Grant Hawkins, Public Defender in Judge Tranberg's court;
Lucia Henshaw, Bookkeeper for Municipal Courts;
Richard Kammen, Member of Indianapolis Bar Association Board of Managers, former public defender in Judge Dougherty's court;
Harold Kohlmeyer, Presiding Judge, Marion County Municipal Courts;
Bruce Kotzan, State Court Administrator;
Larry Landis, Director of Training for the Indiana Public Defender Council;
Lee Larson, Juvenile Court Administrator;
Patrick Sullivan, Judge, Indiana State Court of Appeals;
John Tranberg, Judge, Marion County Superior Court, Criminal Division;
Linda Wagner, Public Defender in Judge Tranberg's Court;
William Wooden, Chairman of the Indianapolis Bar Association Public Defender Committee

The following report is based on the information collected from these interviews and data collected on site. Section 2 provides a summary of the

court organization and criminal defense system in Marion County.* In addition, it details the view of the Indianapolis Bar Association and presents some of the national standards for public defender systems which are not currently being complied with in Marion County. Section 3 presents a cost break-out of the current public defender system by court and in the aggregate. Section 4 presents projected costs of the proposed public defender agency. Section 5 is an assessment of the non-pecuniary economies anticipated for the proposed public defender agency.

*Mental commitment cases are handled by the Probate Court of Marion County. Although counsel is available to indigents involved in such cases, Probate Court is considered outside the criminal justice system in Marion County and hence this service is not considered part of the public defender system.

2. COURT ORGANIZATION AND CRIMINAL DEFENSE SYSTEM IN MARION COUNTY

The court of general trial jurisdiction in Marion County is the Superior Court. The Superior Court is divided into a civil and a criminal division. The criminal division has exclusive criminal jurisdiction in all felony cases except Class D felonies for which it has concurrent jurisdiction with the Marion County Municipal Court. The Municipal Court has original jurisdiction in all misdemeanor cases, concurrent jurisdiction in Class D felony cases and probable cause jurisdiction for all other felony cases commenced by the Prosecutor's Office by information or complaint. There is a separate Juvenile Court to hear all delinquency, status offender and other matters pertaining to the rights and responsibilities of juveniles. A separate public defender system operates in each of these courts.

The criminal division of the Superior Court of Marion County consists of four courts. A single judge elected by the voters of Marion County is in charge of administering each of the four courts, and each is organizationally, administratively and operationally autonomous and independent of the other three judges. Each judge is responsible for hiring five part-time public defenders who represent indigent defendants in his or her court. The pay for each of the 20 part-time criminal court P.D.'s was recently (1979) raised from \$6,250 to \$9,600 per year. Many perceive the selection of public defenders by the criminal court judges as, in part, political appointments. Most of these part-time public defenders represent criminal defendants in their private practice of law. There is no prohibition against representing their private clients in the court in which they appear as public defender. The judges keep no records of the public defender activities and no systematic supervision or training is offered.

The public defenders also handle conflict cases when the judge determines that the defense of one defendant conflicts with that of another defendant in the same case. The public defenders may request that one of their colleagues represent one of the defendants in a conflict case but the decision ultimately rests with the judge. Similarly, requests for such support services as expert witnesses, investigators and transcripts must be approved by the judge trying the case. No data are available in the criminal courts indicating relative workloads of P.D.'s, number of requests for

additional P.D.'s (conflict cases) granted/denied, percentage of pleas vs. trials, time spent on P.D. cases vs. private attorney cases, number of motions for change of judge by P.D., number of appeals, etc. Indigent defendants are first seen by the public defender at arraignment or at the first appearance before the judge. In cases bound over from Municipal or Juvenile Court, a new criminal court public defender is assigned and the Municipal or Juvenile Court public defender has no more contact with the client or case. There is no continuity of counsel. No effort is made to determine indigency prior to presentment before a judge. A simple declaration of indigency to the judge is usually sufficient to engage a public defender in criminal court and no effort is made to validate claims of indigency or recoup partial payment where appropriate.

Appeals in cases involving indigents from criminal courts in Marion County are typically assigned to private counsel by the judge from whose court the case is being appealed.* The private attorney handling such an appeal is paid approximately \$1,500 per appeal. These assignments are viewed by many as political patronage from the criminal court judges to friends and political allies or in some cases rewards to public defenders for doing a good job at trial. It is significant to note that the total criminal division budgetary allocation for counsel on appeal exceeds the allocation for trial court representation. Most of the lawyers we interviewed agreed that the quality of appellate work by assigned counsel was uniformly poor.

The Municipal Court hires 11 part-time public defenders and one part-time supervisor. The supervisor is available when needed and spends between 25 and 50 percent of his time on public defense matters. The other part-time public defenders spend one day per week on public defender cases. The Municipal Court public defenders are paid \$5,000 per year, the supervisor \$8,600. The Municipal Court public defenders are selected from a pool of applicants by all the Municipal Court judges sitting en banc. The public defenders represent defendants before each of the Municipal Court judges on a rotating basis. Thus, although the P.D.'s are hired by the judges before whom they practice, the hiring decisions are made en banc and each P.D. practices before each judge. The role of the supervising P.D. is basically

*The State Public Defender of Indiana represents indigents in proceedings involving post-conviction Rules 1 and 2 and in habeas corpus proceedings. Otherwise, all indigent appellants are represented by counsel appointed by the county criminal court judges.

to facilitate scheduling and to fill in when regular P.D.'s are absent and does not include a regular monitoring or record keeping function. Indeed, the only record keeping for Municipal Court public defenders is performed by five part-time law interns and a full-time secretary. And these records only indicate the workload of the interns (in terms of the number of defendants they interview to determine eligibility for public defense) and the workload of the court (in terms of disposition), but the records do not record the workload of the public defender attorneys. The Municipal Court caseload is too great to allow for a reasonable amount of preparation by the P.D.'s on any given case, and virtually no investigative or other support services are available to the P.D.'s in the Municipal Courts. Often the public defender in Municipal Court is unable to talk with his client or witnesses for more than a few minutes prior to their appearance in court.

The Juvenile Court Session of the Superior Court has jurisdiction over the entire range of law and non-law violations involving juveniles. These range from delinquency proceedings, which include the common status offenses (runaways, incorrigibility--"stubborn child," truancy and injury to morals and health), dependency, neglect and paternity cases. Juveniles charged with violent offenses or one of a broad range of felonies may be "waived" to the Criminal Court for prosecution as adults. The Juvenile Court is a self-contained entity located several miles from the Superior and Municipal Courts. The Court is administered by an elected full-time Juvenile Court Judge who appoints four part-time referees who are permitted to retain their private practice. These referees may elect to become full-time but have not done so.

Since 1974 the Juvenile Court public defenders have been funded through the Court's budget. Two are full-time with salaries of \$20,057 and \$18,720 respectively. There are also two attorneys who share a \$19,660 salary on a half-time basis. The defenders also have a full-time secretary and four legal interns funded through a federal grant who work 30 hours per week. The defenders are housed in a separate building in the Court/Detention Center complex.

2.1 The Indianapolis Bar Association's View

In October 1978 the Board of Managers of the Indianapolis Bar Association adopted a resolution in support of a major reform of the current system. It was the Board of Managers' view that legislation establishing an independent public defender agency for Marion County was necessary to overcome the defects of the current system. As noted in Section 1 above, several events transpired after October 1978 resulting in the creation in 1979 of the Public Defender Committee of the Indianapolis Bar Association. After a series of meetings in 1979 the Committee filed its report with the Board of Managers on July 25, 1979. The following is excerpted from that report.

Essential consensus of the committee has indicated that the following problems exist with the present Marion County public defender system:

1. Late Entry of Counsel. Public defenders are appointed for defendants at their first court appearance. Thus, there is a problem of late entry of the attorney for the defendant who may be incarcerated for one or two days without the benefit of counsel. During that time, interrogation may occur and important evidence and witnesses may disappear and important early investigation may not be adequately handled or not handled at all.
2. Gap Between Muni-Juvenile Court and Criminal Court. When a defendant appears in either Municipal Court or Juvenile Court upon a charge which may ultimately go to criminal court, such defendant is represented by a public defender appointed by municipal court or juvenile court. If the court decides at the bind over or waiver hearing to bind over or waive the case to criminal court, the role of the public defender at that level ceases. The defendant then is without defense counsel until the case comes before the criminal court judge, who then appoints a criminal court public defender. This gap is usually a matter of days and sometimes is as long as weeks and months.
3. Lack of Continuity of Counsel. As a result of the above situation, there is a lack of continuity in the representation of counsel in that the defendant does not have the benefit of having the same attorney represent him throughout his case.
4. Lack of Uniformity and System. The present public defender system is basically a one lawyer for one defendant system. There are not uniform standards for determination of indigency. There are not uniform standards for what defense counsel will do for the indigent defendant. There is no over-all system to coordinate the efforts of public defenders. . .
5. Lack of Independence From Judiciary. Public Defenders are appointed by the courts before whom they appear. At the committee meeting held June 26, 1979, attended by all but one member of the committee, the members present were unanimous that defense counsel should be independent from the courts before whom they appear. . .

The Bar Association's Board of Managers accepted the findings and recommendations of this report in November 1979 and requested the Public Defender Committee to redraft the legislation filed in early 1979.

While these problems are stated in terms of structure and process, the quality of representation for indigent defendants in Marion County is also very much an issue. The quality of representation is difficult to measure in any jurisdiction, but it is particularly difficult in Marion County because of the lack of data regarding public defender caseloads, rates of pleas vs. trials, appeals, rates of guilty vs. not-guilty, time spent with client, support services, client satisfaction etc. However, while some believe the current system results in adequate representation many, including judges, public defenders, prosecutors, and members of the private bar, believe the current system results in a significantly lower quality of representation than would be possible if a centralized and professionalized system of public defense were created. Indeed, the Indianapolis Bar Association's Public Defender Committee recommended that "The Marion County public defender system be changed to provide for independent public defenders which are not appointed by the courts before whom they appear and represent clients, [and that] a Marion County public defender system be adopted." This reiterates the same recommendation made three years earlier in the report prepared by the National Center for Defense Management.

2.2 The Marion County Public Defender System viz-a-viz National Standards For Representation of Indigent Defendants

The American Bar Association has recently approved Standards Relating to the Administration of Criminal Justice. Chapter Five of these standards is entitled "Providing Defense Services" and sets forth 24 standards. These nationally accepted standards were derived after "thousands of hours of work by volunteer members of the Association, consultant reporters (who did both the underlying research and the actual drafting of the standards and commentaries), and liaison representation to the ABA Standing Committee on Association Standards for Criminal Justice from approximately fifty nationwide groups interested in the improvement of the American criminal justice system."

While few, if any, public defender offices meet all of the proposed standards, the Marion County system falls short of most of the ABA standards. The following are some of the more important ABA standards which go unmet in Indianapolis:

Standard 5-1.2 Plan for legal representation. The legal representation plan for each jurisdiction should provide for the services of a full-time defender organization and coordinated assigned counsel system. . .

Standard 5-1.3 Professional independence. The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of lawyers for specific cases should not normally be made by the judiciary or elected officials . . .

Standard 5-1.4 Supporting services and training. The plan should provide for investigatory, expert, and other services necessary to an adequate defense . . . The plan should also provide for the effective training of defenders and assigned counsel.

Standard 5-1.5 Funding . . . Under no circumstances should the funding power interfere with or retaliate against professional judgments made in the proper discharge of defense services.

Standard 5-3.1 Chief Defender and staff. Selection of the chief defender and staff should be made on the basis of merit and should be free from political . . . and other considerations extraneous to professional competence . . . Selection of the chief defender and staff by judges should be prohibited.

Standard 5-3.1 Restrictions on private practice. Defense organizations should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of law.

Standard 5-5.1 Initial provision of counsel. Counsel should be provided to the accused as soon as feasible after custody begins . . .

Standard 5-5.2 Duration of representation . . . Counsel initially provided should continue to represent the defendant throughout the trial court proceedings.

As noted above, the ABA's effort at establishing standards has been promulgated as a result of several years of study and experience. The result represents the state of the art for criminal defender systems and incorporates and builds on other attempts to set national standards, including the 1976 Report of the National Study Commission on Defense Services.

Most, if not all objective observers would argue that the above standards are inconsistent with the philosophy, organization and operations of

the Marion County Public Defender System. Indeed, the 1976 "Analysis of Indigent Defense Services In Marion County (Indianapolis), Indiana" conducted under the auspices of The American University Law Institute's Criminal Courts Technical Assistance Project concludes as follows:

To remedy the problems detailed in this report, we believe that nothing short of a major overhaul in Marion County's system for indigent defense is required.

Three years later, after carefully reviewing the system and talking with many of the participants in the system, we concur with the findings of the Indianapolis Bar Association's Public Defender Committee and the conclusions stated above. We believe that an independent, centralized public defender agency is required for Marion County.

3. THE CURRENT COSTS FOR PUBLIC DEFENSE IN MARION COUNTY

Assessing the costs of the public defender operations currently in place in Marion County is extremely difficult for several reasons. Most importantly, there is no place in the county judicial or fiscal system where comprehensive cost data are collected. Each criminal court, for example, receives a total budgetary allocation which can be used as the judge determines is appropriate within broad limits. Thus, the judges may vary in the amount they allocate toward appellate work, expert witness fees or investigatory services; but no records are kept on the actual expenditures for the various public defense activities. Another major constraint in assessing public defender costs is the lack of complete and accurate records on overhead costs. While the budget analysts of the Municipal and Juvenile Courts have estimated these costs, the fragmented and decentralized nature of the criminal courts makes such estimates most difficult. In addition, the diverse and uncoordinated public defender structures among the Superior, Municipal and Juvenile Courts make data collection and consistency of analysis on a county-wide basis extremely difficult. Finally, some direct costs to the system are hidden or not typically considered as part of the public defender system. Most of these, such as secretarial or clerical support time provided by criminal court personnel and their related equipment and supplies could not be calculated and are not included in the following assessment. Other charges, such as payments to attorneys from other counties in change of venue cases are not part of the public defender budget allocation but are obviously costs to the county which might be alleviated by an independent public defender agency.

The costs described below are the result of a score of interviews and the collection of whatever data could be provided by the County Auditor, State Court Administrator and the judges and personnel of each court. We wish to express our appreciation for the cooperation of all these individuals.

3.1 The Criminal Division of the Superior Court

The criminal division of the Superior Court consists of four courts. The judge of each court administers all matters within the court including the public defender program. The criminal courts do not have a central budget analyst or bookkeeper as do the municipal courts. Indeed, except for

the direct charges for public defender salaries and direct costs in transcripts and witness fees reported in the County Auditor's monthly reports, no records are available on the actual costs of the criminal courts' public defender services.

As with each of the courts in Marion County using public defender services, we have broken the criminal courts' costs into the following categories:

Direct Charges (Salaries). The criminal courts employ 20 part-time public defenders (5 in each court). Each of these part-time public defenders is paid \$9,600 per year. In addition, two types of fees are paid to attorneys representing indigents in the criminal courts. Members of the private bar (or part-time public defenders acting in their private capacity) are assigned appeals and paid between \$1,200 and \$2,000 per case. Each of the four courts has an "appeal fees" budget line. Also Marion County pays fees to attorneys appointed in other counties to represent indigents in cases venued out of Marion County. In such change of venue cases, counsel is assigned by the judge who ultimately hears the case, and the cost of representation is charged to the county from which the case originated. [In many jurisdictions with an independent public defender agency, these costs are absorbed by the agency because its public defenders follow the case until disposition.] In an effort to estimate the cost resulting from change of venue, we looked at the county auditor receipts for payment to counsel in 1979 in Hancock County--the county in which most change of venue cases are heard. In addition, it was reported that a recent change of venue case to Hamilton County has resulted in a \$55,540 charge to Marion County for attorneys' fees (Indianapolis Star, July 19, 1979, p. 1).

Direct Costs. The only direct costs budgeted for public defense in the criminal courts were the costs for transcripts and expert witness fees. It was estimated that 10 percent of the courts' total budget allocation for witness fees is spent on public defender cases. Since no office space or materials are directly charged to public defenders, no estimates were attempted regarding actual costs for telephone, supplies, copier, etc.

Indirect Costs. Indirect costs include the county's share of FICA and insurance payments for public defenders. FICA payments made by the county are 6.13 percent of salaries, and insurance premium payments in 1979 are \$25.96 per employee per month. No attempt was made to estimate administrative and overhead costs incurred by the public defender system.

Based on the above assumptions and on cost data available for 1979 the actual estimated costs of the public defender system in the criminal division of Superior Court for 1979 is as follows:

<u>Direct Charges (Salaries/Fees) -</u>	<u>Court Number</u>				Total
	1	2	3	4	
Public Defenders (Trial Level)	\$48,000	\$48,000	\$48,000	\$48,000	\$192,000
Appeals Fees	52,000	60,000	48,096	44,373	204,469
Attorney Fees in Change of Venue Cases (Hancock & Hamilton Cos.)					<u>80,787</u>
Total Direct Charges					\$477,256

<u>Direct Costs</u>	<u>Court Number</u>				Total
	1	2	3	4	
Transcripts	\$12,000	\$6,600	\$10,000	\$12,000	\$ 40,600
Expert Witness Fees	1,200	--	1,000	1,100	<u>3,300</u>
Total Direct Costs					\$ 43,900

Indirect Costs

Fringe (FICA and Insurance) for P.D.					<u>\$ 18,000</u>
Total 1979 cost of the Criminal Division Public Defender System					\$539,156

3.2 Municipal Court

The cost estimates of the public defender system for the Indianapolis Municipal Court reflect both budgeted salaries and direct costs as well as estimated indirect costs. The estimated costs were prepared by Ms. Lucia Henshaw, the Municipal Court bookkeeper and budget analyst. The cost categories presented below include the following:

Direct Charges (Salaries): The Municipal Court employs a part-time public defender supervising attorney and eleven part-time public defender attorneys. The supervisor helps coordinate in-court schedules of other

public defenders and assists in court when needed. The other attorneys spend 20% (one day a week) as public defenders. In addition, the Municipal Court has five interns (four of whom are supported by a federal grant) who interview and screen defendants for eligibility and case history information. There is also a full-time secretary for the public defender office.

Direct Costs: The direct costs of the Municipal Court public defender system includes the cost to the county incurred as a result of public defender business for such items as postage, telephone, office equipment repair, office supplies, etc. In addition, direct costs include the matching funds required for the federal grant which supports the four interns mentioned above.

Indirect Costs: Indirect costs include the county's share of FICA and insurance payments for public defender staff. In addition, it was estimated that public defender offices occupy 452.25 square feet and the county rate for this space is \$11.052 per square foot.

Based on the above assumptions and on cost data available for 1979 (through November), the actual estimated costs of the public defender system in the Municipal Court for 1979 is as follows:

<u>Direct Charges (Salaries)</u>			
Public Defender Coordinator		\$ 8,606	
Public Defenders		56,442	
Law interns		20,210	
Secretary		<u>8,848</u>	
	Total Direct Charges		\$ 94,106
<u>Direct Costs</u>			
Postage		100	
Telephone		954	
Office Equipment Repair		160	
Office Supplies and copier rental		1,770	
Data Processing		756	
Work study students		298	
Matching funds for federal grant		<u>780</u>	
	Total Direct Costs		4,818
<u>Indirect Costs:</u>			
County share of FICA and Insurance		5,189	
Space 452.25 sq. ft. @ \$11.052		4,998	
Capital Outlay		<u>875</u>	
	Total Indirect Costs		<u>11,062</u>
Total 1979 cost of Municipal Court Public Defender system			\$109,986

3.3 Juvenile Court

Like the Municipal Court, the cost estimates of the public defender system for the Marion County Juvenile Court reflect budgeted salaries and direct costs as well as estimated indirect costs. The estimated costs for Juvenile Court were derived by Mr. Lee Larson, the Juvenile Court Administrator. While it was sometimes difficult to isolate a particular expense attributable to public defenders, Mr. Larson made conservative approximations based on his detailed knowledge of the Court's budget and expenditures. The cost categories presented below include the following:

Direct Charges (Salaries): The Juvenile Court currently employs 4 public defenders--2 full-time and 2 part-time. The salaries are \$20,057 and \$18,720 respectively for the 2 full-time attorneys and the 2 half-time attorneys split a \$19,660 annual income. In addition, the Juvenile Court has four law interns supported primarily by a federal grant requiring matching funds paid by the county. There is also a full-time public defender secretary for the Juvenile Court.

Direct Costs: The direct costs of the Juvenile Court public defender system include the costs incurred as a result of public defender business for such items as supplies, telephone, and matching funds for the law intern grant.

Indirect Costs: Indirect costs include the county's share of FICA and insurance payments for public defender staff (computed at 15% of salary); utilities for the P.D. office (estimated at \$240/month); and maintenance and capital improvement for the P.D. office. In addition, it was estimated that Juvenile Court public defender offices occupy 2,500 square feet of county-owned space. Using the rental rate of \$11.052 per square foot estimated by the Municipal Court budget analyst, an annual rental rate was computed.

Based on the above assumptions, the actual estimated costs of the public defender system in the Juvenile Court for 1979 is as follows:

<u>Direct Charges (Salaries)</u>		
Full-time public defenders	\$38,777	
Part-time public defenders	19,660	
Law interns (4)	28,080	
Secretary	<u>10,300</u>	
Total Direct Charges		\$ 96,817

<u>Direct Costs</u>		
Supplies	\$ 500	
Telephone	540	
Matching and Administrative Funds for Law Intern grant	<u>2,000</u>	
Total Direct Costs		\$ 3,040
<u>Indirect Costs</u>		
Fringe (FICA and Insurance) for P.D.'s and secretary @ 15%	\$10,311	
Fringe for law interns	1,920	
Utilities	2,500	
Maintenance and Capital Improvement	4,000	
Space 2,500 sq. ft. @ \$11.052	<u>19,894</u>	
Total Indirect Costs		\$ 38,625
Total 1979 cost of Juvenile Court Public Defender system		\$138,482

3.4 Aggregate Costs of Marion County Public Defender System

By aggregating the costs described above we can derive an estimated total cost for Marion County Public Defender services in 1979. This total necessarily is an estimate because of the lack of detailed budget and expenditure records. However, because of the efforts and cooperation of the administrative personnel in the Municipal and Juvenile Courts we feel these estimates are as close to the actual costs as possible. Wherever there was doubt or room for error, we accepted the conservative (lower) estimated cost.

The following presents the aggregated costs of the Marion County Public Defender System in 1979 by category and by court:

Aggregated Costs of Marion County Public Defender System, 1979

<u>Direct Charge (Salaries):</u>		
Criminal Courts	\$477,256	
Municipal Court	94,106	
Juvenile Court	<u>96,817</u>	
Total Direct Charges		\$668,179
<u>Direct Costs</u>		
Criminal Courts	\$ 43,900	
Municipal Court	4,818	
Juvenile Court	<u>3,040</u>	
Total Direct Costs		\$ 51,758

<u>Indirect Costs</u>			
Criminal Courts		\$ 18,000	
Municipal Court		11,062	
Juvenile Court		<u>38,625</u>	
	Total Indirect Costs		<u>\$ 67,687</u>
Total Cost for Marion County Public Defender System, 1979			\$787,624

In undertaking the task of determining the cost of representation in Marion County, we have consistently been conservative in our estimates. We included, for example, only two of the 92 counties in our assessment of costs pertaining to change of venue. We have not adjusted costs to reflect the effect of inflation, and we have not included the hidden, but actual administrative costs of the system such as time spent on public defender matters by judges, court secretaries and bookkeepers or administrators. The Municipal and Juvenile Court budget analysts estimated an administrative cost for the public defender program in their respective courts as \$3,290 and \$6,000.

4. PROJECTED COSTS OF PROPOSED COUNTY DEFENDER AGENCY

Projecting the cost of a proposed county defender agency is difficult for several reasons. Most importantly, the baseline data available are incomplete and in many instances inappropriate. For example, caseload data are deficient and the estimated actual costs of administration of the current decentralized system cannot be used in contemplating a centralized administration designed to provide services which do not currently exist. Secondly, the proposed legislation (see Appendix) leaves the structural and personnel details to be determined by the head of the county defender agency. While we believe it is best to allow the Public Defender great latitude in organizing and structuring the office, the difficulties in projecting the cost for this agency prior to its establishment are obvious. However, the projection set forth below reflects a realistic assessment of what is needed to substantially improve the provision of representation for indigent defendants in Marion County. In developing this projection we have drawn from ABA and other national standards for public defender offices regarding caseload and staff mix; the experience of public defenders in other jurisdictions; prior experience of staff and consultants in providing representation to indigents; and, requirements of the proposed legislation.

On the basis of this input, the projected cost for the proposed public defender agency is \$10,924 less than the total cost currently expended for public defender services in Marion County.

The legislation provides for an independent governing board, a chief counsel and appropriate professional and support staff as needed to ensure competent and effective representation of the poor. The legislation also includes provision for training services, screening for indigency and the development of a partial payment system. The following projections include the costs necessary to implement all the activities, services and functions provided for in the legislation.

In an effort to make these projected costs comparable to the estimated costs of the current system, we present them in terms of the categories used in the previous section (direct charges, direct costs, indirect costs). The following sub-sections present the rationale for the projections and Section 4.4 sets forth the projected budget. Unless otherwise stated, all positions discussed below are full-time equivalents. It is anticipated that an assigned

counsel program will be developed and some cases will be assigned to individual members of a panel of private attorneys. There may also be some mix between full-time and part-time public defenders. Our use of full-time equivalency projections is based solely on our attempt to simplify these budget projections.

4.1 Direct Charges (Salaries)

- Attorneys

The proposed legislation provides for a Director or Chief Counsel of the county defender agency. This is the key operational person responsible for development of the organizational structure, staff selection, budget preparation and day-to-day administration of the agency. The proposed legislation states that, "The director's term of employment and compensation shall be set at a level commensurate with his qualifications and experience, which recognizes the responsibility of the position, and which, if possible, is comparable to that of the prosecuting attorney of the county." In addition, it is our view that the following staff are necessary to perform the required functions.

One senior staff attorney will be needed to perform some administrative responsibilities assigned by the Director. These might include scheduling and caseload monitoring, training and support service coordination. This attorney might also manage his or her own cases. Because of the management responsibilities attached to this position, the caseload should be somewhat lighter than for the other staff attorneys.

In addition to the Director and senior staff attorney mentioned above, the agency should employ approximately 19 attorneys within a salary range of \$14,000 to \$23,000. The assumptions on which we based our projection of 19 full-time equivalent attorneys are as follows.

Criminal Court. Based on our interviews with the criminal court judges and public defenders and by analyzing the available data, we estimate a total criminal court caseload of approximately 2000 cases per year (500 cases per court). Approximately 60 percent of these are currently public defender cases for a total annual public defender caseload of 1200 cases. Of these, well over 150 are bound over from Municipal and Juvenile Court and under the proposed system these would be handled by the public defenders from those courts. Based on the national standards recommending a caseload of no more than 150 felonies per attorney, we project a need for seven public defenders in the criminal division of the Superior Court.

No records are kept regarding the actual number of appeals filed from criminal court involving indigent appellants. However, based on total budget figures and the opinion of public defenders we estimate that between 100 and 120 cases involving indigent clients are appealed each year. With support from law interns (discussed below) and the development of an appellate brief bank over time, we project the need for two full-time equivalent attorneys to handle the appeals from the criminal courts.

Municipal Court. We estimate that the public defenders in Municipal Court handle approximately 2500 cases per year. Based on national standards which recommend no more than 400 misdemeanor cases per attorney per year we project a need for six attorneys plus several law students (discussed below) to serve the municipal court.

Juvenile Court. The Juvenile Court caseload is difficult to determine because precise statistics are not kept. However, the chief public defender for the Juvenile Court estimates that in 1979, public defenders handled between 1,000 and 1,200 cases. We project a need for approximately four public defenders for Juvenile Court.

• Administrative and Support Services

Several types of support are necessary to provide adequate representation. The mix projected below is based on national standards and the experience of other public defender offices. The precise numbers of staff are subject to variation based on conditions, but the functions (many of which currently are performed only minimally, if at all) are essential in improving quality of representation.

The agency should hire both an administrative assistant and bookkeeper to assist the director and senior staff attorney with the administration of the agency. In addition, the agency should include investigative and social services staff. The investigators would be available for work in all three courts and also serve to determine eligibility or indigency of clients. One chief investigator, one staff investigator and one eligibility director are projected to meet these needs. Social services needs would be met by a director and two staff. These staff would be available in all courts as needed.

The entire agency, including administrative trial and support services, should include eight secretaries, at least two of whom are capable of using the word processing machine. One of these will work for the director and senior staff attorney on administrative matters, four will serve the trial unit attorneys (in all three courts), two will serve support service personnel, and one will serve the appeals attorneys. Depending on workload all staff can shift among courts.

4.2 Direct Costs

As indicated in Section 3, direct costs include several items pertaining to the delivery of public defender services. For the proposed county defender agency direct costs include the following: transcripts; expert witness fees; postage; equipment (desks, chairs, typewriters, cabinets, files, etc., amortized over five years); lease of copier and word-processing machines; supplies; library (purchases amortized over five years and upkeep); and telephone. The projected costs for these items are based on current costs and experience in other public defender offices.

In addition to the above, we project the need for several law school interns to serve in all three courts as needed at a direct cost of \$2,000 paid to a law school clinical program as an administrative fee. These students can perform a variety of functions including case investigation, research assistance for appeals, interviewing and eligibility checks, and direct assistance by third year students with municipal and juvenile court cases. Many law schools have developed or are about to develop a clinical program to supplement the classroom education of their law students. These programs are very popular among the students and result in an important resource for public defender offices at little or no cost to the state or county. Currently the public defenders use law interns provided by federal grants. It seems extremely likely that at least the same number of interns could be provided by the Indianapolis Law School at a greatly reduced cost.

4.3 Indirect Costs

Indirect costs consist primarily of fringe benefits and overhead. Fringe benefits were computed at 15 percent of salaries. Overhead consists of utilities, maintenance and rent. Cost figures for these items were derived from the baseline costs for similar items as reported for the current Juvenile Court public defender program. The projected rental cost was computed

by assuming an average of 100 square feet per employee. This footage may be slightly more than necessary but is intended to include space for a library and conference/training room. An additional 100 square feet is projected for a reception area. Based on these assumptions the proposed office will require approximately 3800 square feet. The average cost for private office space in the vicinity of the court house is \$9.00 per square foot.

4.4 Projection of Costs For Proposed County Defender Agency

Direct Charges (Salaries)

Director	\$ 30,000	
Senior Staff Attorney	25,000	
Staff Attorneys:		
5 @ \$21-23,000	110,000	
4 @ \$17-21,000	76,000	
8 @ \$15-17,000	128,000	
2 @ \$14-15,000	29,000	
Administrative Assistant	15,000	
Bookkeeper	12,000	
Chief Investigator	15,000	
Staff Investigator	12,000	
Eligibility Director	12,000	
Director, Social Services	14,000	
Social Services Staff (2 @ \$8-12,000)	20,000	
Secretaries (8 @ \$8-12,000)	80,000	
		<u>80,000</u>
Total Direct Charges		\$578,000

Direct Costs

Transcripts	40,600	
Expert witness fees	3,300	
Library (\$10,000 amortized over five years and \$1,000 yearly upkeep)	3,000	
Equipment (\$20,000 amortized over five years)	4,000	
Lease of copier and word processor	8,900	
Supplies (@ \$300/month)	3,600	
Postage (@ \$150/month)	1,800	
Telephone (@ 300/month)	3,600	
Law School Interns (administrative fee)	2,000	
		<u>2,000</u>
Total Direct Costs		70,800

Indirect Costs

Fringe benefits (@ 15% of salaries)	\$ 86,700	
Utilities	3,000	
Maintenance	4,000	
Rent (3,800 sq. ft. at \$9.00/sq. ft)	<u>34,200</u>	
Total Indirect Costs		<u>\$127,900</u>

Total Projected Cost Of Proposed
Marion County Public Defender System \$776,700

5. AN ASSESSMENT OF THE NON-PECUNIARY ECONOMIES OF SCALE AVAILABLE IN A SINGLE COUNTY DEFENDER AGENCY

Any projection of costs and cost savings attributed to the provision of services to indigent defendants through a single county defender agency must necessarily be somewhat imprecise and subjective. However, certain economies of scale--savings or increased efficiency resulting from centralization--are not merely speculative, imagined or theoretical. They are real and have been confirmed by the experience of many single defender agencies. This is not to say that a centralized defender system guarantees quality or effective representation; rather, it creates a structure which allows for the most efficient, cost-effective use of county funds and resources toward accomplishing the goal of quality representation for indigent defendants. As with any organization the actual quality of services ultimately depends on a combination of good structure and competent personnel. Without the former, inefficiency may jeopardize quality; without the latter, quality is impossible.

In this section we discuss some of the advantages of an independent centralized public defender structure and areas in which such a structure is more efficient than the current fragmented system.

5.1 Centralized Administration

The present public defender system in Marion County is decentralized and administered in an ad hoc manner. Many of its activities are highly duplicative such as developing information systems for each court. In addition, the system does not benefit from or reallocate any savings or surpluses available in any of the court levels such as personnel, support services, or overhead. The effect of a dollar spent in one part of the system is felt only there and only at one time. It cannot be "invested" to secure future or spill-over benefits. Because of the decentralized, ad hoc administration, the experience of each part of the system, indeed of each lawyer, is never passed on throughout the defender system.

Centralized administration reduces duplication of effort, allows for distribution of services system-wide as needed, and removes the responsibility for a vast array of administrative tasks (e.g., scheduling, coordination of assignments, record-keeping, budget, recruitment and selection) from others in the court system.

5.2 Accountability

In the present system, no single person or office is or can be held accountable for efficient, economical and effective performance or use of resources. A careful and prudent allocation of funds by the City-County Council is difficult in the absence of accountability or review by the line agencies. Costs are "hidden"; resources are expended without documentation and in the absence of a rational plan, program or objective. As the county has seen in the past few years, the cost of the public defender system has increased markedly without a comparable increase in quality or caseload. A report prepared for the Indianapolis Lawyers Commission three years ago (December 9, 1976) showed a total cost for the public defender system of \$509,544. While that report was also constrained by incomplete data, the current estimated costs of \$787,624 represent an increase of \$278,080 or 55 percent in three years.

It seems apparent that the ad hoc approach to meeting public defender needs in Marion County not only fails to address system-wide needs but is not cost-effective.

A single, centralized county defender office can be held accountable. The focus of responsibility is clear for the entire system. Justifications for every requested increase in resources can be demanded at every step and the costs can be directly measured and documented.

5.3 A Statistical Base

Neither cost nor workload data are currently kept regarding public defender services system-wide. In sum, almost \$800,000 are spent annually in Marion County without benefit of accurate, up-to-date information on the number of cases handled for those dollars. After more than 20 interviews (see Section 1) we found no one who had a firm idea of the system-wide defender caseload. This is a baseline that must exist and would be available from a single defender agency.

5.4 Uniform Recruitment and Selection Standards

The absence of centralized hiring based on uniform criteria results in duplication of effort and at least the appearance of patronage. Most professional, legal agencies have learned that "merit" hiring is necessary to

ensure a consistently high quality of representation. In addition, the appearance of patronage may severely limit the pool of applicants thereby making staff turn-over and recruitment more costly.

5.5 Training, Supervision and Retention of Personnel

Another benefit of a centralized public defender system is the ability to devote and schedule time and resources critical to good training and development programs. These programs produce better attorneys and reduce staff turn-over. The present system allows for little, if any, transferability of experience among public defenders. An independent centralized defender agency, however, provides a structure which allows and encourages the sharing of experiences and knowledge; entry-level and on-going training and supervision programs, in-court observation, shared experiences through meetings; and centrally developed manuals, library resources and legal briefs and research.

5.6 Continuity of Counsel

One of the major criticisms of the current public defender system is the lack of continuity of counsel (see Section 2 above). Because public defenders in the Municipal and Juvenile Courts do not follow indigent defendants from those courts to the criminal division, bind-over cases invariably require dual representation. In many public defender agencies the attorney who is initially assigned a case is responsible for that case through disposition. Continuity of counsel has several benefits including: a) reducing duplication of effort by attorneys having to become familiar with the client and case; b) more effective representation; c) job satisfaction and increased experience for public defender attorneys; and d) more expeditious movement of cases thereby lowering the costs of detention time.

5.7 Supportive Social and Investigative Services

These services are essential to effective representation at every level. They are generally economical to provide because the individuals hired are less costly than attorneys; they can handle many facets of a case that attorneys now should be handling but for which they often lack the inclination or expertise; and they supplement the work of other actors in the

system such as investigators and social workers, at no additional cost. These kinds of resources also become the vehicle for tapping a whole range of existing community resources. Furthermore, since dispositional work is required in most cases (such as recommendations to the judge regarding alternative sentencing), the availability of these services frees up attorneys for research, preparation and trial time. Finally, with centralized support services, the public defender system can begin to systematically inquire into eligibility of prospective clients for public defender services, and seek to recoup partial payment from the partially indigent. Currently, little effort is made to determine the indigency level of clients and no recoupment efforts are made.

In sum, the establishment of an independent centralized county defender system for Marion County will not only provide a structure compatible with national standards, but it will result in several economies of scale. It will increase efficiency, productivity and accountability which logically will reduce costs. At the same time it should substantially improve the quality of representation.

6. CONCLUSION

In this report we have outlined the public defender system in Marion County, its major shortcomings and cost of operation, and projected the cost and benefits associated with the proposed county defender agency. As noted throughout, we were constrained by limited data but encouraged by consistent information received from over twenty interviews with most of the key personnel in Marion County and the public defender system. The following conclusions are based on our two site visits; data supplied by the several courts, county auditors office and State Court Administrator; and our interviews:

- The current public defender system has been under review by the Indianapolis Lawyers Commission and Bar Association for almost four years. The result of this review is a report identifying several major weaknesses in the system and a recommendation for legislation to create an independent county defender system. (See Section 2.1.)
- The current Marion County public defender system falls short of and is inconsistent with most of the nationally accepted standards for public defender systems. (See Section 2.2.)
- The costs of the current public defender system are estimated to be 55 percent greater than the estimated costs three years ago. (See Section 5.2.)
- It is estimated that a county defender system designed to meet the current caseload and to provide the additional services described in the proposed legislation will cost approximately \$776,700, \$10,924 less than the current system. (See Section 4. et seq.)
- In addition to a cost savings, the proposed county defender system will result in several economies of scale and will help bring Marion County closer to the standards for public defender systems established by the American Bar Association. (See Section 5. et seq.)

APPENDIX

DIGEST

Adds IC 33-1-7.5; to establish a county defender system, for Marion County, to provide legal representation for eligible persons in the county; to provide for the appointment of a county defender commission, the establishment of a defender agency and the hiring of a director and staff attorneys and support personnel; to require the commission to adopt rules regarding eligibility determinations; to provide that after January 1, 1981, eligible persons would be allowed to receive legal representation in certain proceedings; to require client contribution to the cost of representation in certain instances; and to provide certain other requirements for the operation of the system.

A BILL FOR AN ACT to amend IC 33-1 by adding a new chapter concerning public defender systems in certain counties.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF INDIANA:

1 SECTION 1. IC 33-1 is amended by adding a NEW chapter
2 7.5 to read as follows:

3 Chapter 7.5. County Public Defender Systems.

4 Sec. 1. This chapter applies to any county in which a
5 consolidated city of the first class established under IC
6 18-4 is located.

7 Sec. 2. The purpose of this chapter is to provide:

8 (1) uniform, high quality legal representation for
9 eligible persons in criminal and related proceedings

1 consistent with constitutional and public policy
2 requirements of fairness, equal protection, and due
3 process of law;

4 (2) effective legal representation to eligible persons
5 as soon as the person is arrested or detained or when a
6 process commences which could result in a loss of
7 liberty;

8 (3) uniform standards for the determination of
9 eligibility for legal representation at public expense;
10 and

11 (4) uniform standards for the appointment of attorneys
12 to represent persons at public expense in criminal and
13 related proceedings,

14 Sec. 3. As used in this chapter:

15 "Assigned counsel program" means an organized defense
16 program administered by the director which uses private
17 attorneys to handle the cases of eligible persons from time
18 to time on a case basis.

19 "Commission" means the county defender commission,

20 "County defender agency" means the unit of county
21 government responsible for providing defense services to
22 eligible persons under this chapter.

23 "County defender system" means a system for providing
24 defense services to a county by means of a centrally
25 administered organization with basically a full-time staff,

26 "Director" means the county defender director,

27 "Eligible person" means a person who is eligible for
28 legal representation by virtue of meeting the financial

1 guidelines of section 11 of this chapter.

2 "Panel attorney" means a private attorney hired by the
3 director to handle cases of eligible persons from time to
4 time on a case basis within the assigned counsel program.

5 "Staff attorney" means an attorney who serves on the
6 staff of the county defender agency.

7 Sec. 4. (a) There is created a county defender
8 commission consisting of seven (7) members. In selecting
9 persons for appointment to the commission, the primary
10 consideration shall be to insure that the defenders are as
11 independent of political and judicial influence as are
12 lawyers in private practice.

13 (b) The seven (7) members of the county defender
14 commission shall be appointed as follows:

15 (1) one (1) member shall be appointed by the president
16 of the Indiana public defender association;

17 (2) one (1) member shall be appointed by the dean of
18 the law school located within the county or by the
19 president of the Indiana public defender association if
20 no law school is located within the county;

21 (3) three (3) members shall be appointed by the
22 president of the largest bar association of the county;

23 and

24 (4) two (2) members shall be appointed by the other
25 five (5) commission members.

26 (c) Prosecuting attorneys, judges, and law enforcement
27 officials may not serve as members of the commission.

28 (d) All terms shall be for three (3) years. Vacancies

1 in the membership of the commission shall be filled in the
2 same manner as original appointments. Appointments made to
3 fill vacancies which occur before the expiration of a term
4 are for the remainder of the unexpired term. Members of the
5 commission may be reappointed for one (1) additional term.
6 All members of the commission shall serve until their
7 successors have been appointed and qualified. A commission
8 member may be removed from office only by unanimous vote of
9 the remaining commission members.

10 (e) Commission members serve without salary, but are
11 entitled to receive a per diem and mileage on those days in
12 which they are engaged in the business of the commission.
13 Per diem and mileage paid shall be that amount paid to state
14 employees.

15 Sec. 5. The commission shall:

- 16 (1) appoint the director and enter into a written
17 agreement with the director concerning the terms and
18 conditions of his employment, including the amount of
19 compensation and duration of the appointment;
- 20 (2) establish procedures for the selection of staff
21 attorneys and staff assistants;
- 22 (3) receive client complaints which are not resolved by
23 the county defender agency, review office performance
24 by requesting relevant data and statistics, and monitor
25 the performance of the director;
- 26 (4) provide advice to the director;
- 27 (5) assist in ensuring the independence of the county
28 defender system by educating the public regarding

1 constitutional requirements and the functions of the
2 defenders;

3 (6) serve as liaison between the city-county council,
4 the general assembly, and the county defender system
5 upon request of the director;

6 (7) review and approve the budget request prepared by
7 the director and provide advice on the budget request
8 before its submission, and provide support for the
9 budget request before the city-county council;

10 (8) establish a fee schedule for payment of panel
11 attorneys;

12 (9) approve the financial eligibility guidelines and
13 procedures;

14 (10) determine matters affecting the compensation,
15 vacation, and employment benefits of the director;

16 (11) determine eligibility standards for services of
17 panel attorneys;

18 (12) establish regulations for review and appeal of the
19 discharge of county defender agency employees; and

20 (13) enter into contracts with other governmental
21 agencies to provide similar services if the case is
22 tried or originates in the county.

23 Sec. 6. The commission shall meet monthly and shall be
24 presided over by a chairperson elected by its members. A
25 majority of commission members constitute a quorum, and
26 decisions require a vote of a majority of those present.
27 However, selection or dismissal of the director requires the
28 vote of at least two-thirds (2/3) of the entire commission.

1 Each member of the commission has one (1) voter, and voting
2 by proxy is prohibited.

3 Sec. 7. A budget for the county defender system shall
4 be provided through an annual appropriation subject to the
5 approval of the city-county council. The budget request for
6 the county defender system shall be submitted to the
7 city-county council by the director. After the
8 appropriation for the county defender system has been made,
9 the director may reallocate line items within the budget.

10 Sec. 8. (a) The director appointed by the commission
11 must:

12 (1) be an Indiana attorney with experience in

13 representing persons accused of a crime;

14 (2) have been engaged in the practice of criminal law

15 for at least five (5) years immediately preceding his

16 appointment; and

17 (3) be dedicated to the goals of providing high quality

18 representation for eligible persons and of improving

19 the quality of defense services generally.

20 (b) The director shall devote full time to the duties

21 of the county defender system and may not otherwise engage

22 in the practice of law.

23 (c) The director shall hold office at the pleasure of

24 the county defender commission.

25 (d) The director's terms of employment and compensation

26 shall be set at a level which is commensurate with his

27 qualifications and experience, which recognizes the

28 responsibility of the position, and which, if possible, is

1 comparable to that of the prosecuting attorney of the
2 county.

3 Sec. 9. The director shall:

4 (1) organize the county defender agency;

5 (2) appoint staff attorneys and establish general
6 policy and guidelines regarding the operation of the
7 agency and the handling of cases;

8 (3) provide initial training and continuing education
9 for all defender staff and assigned counsel, which may
10 be augmented by programs sponsored by institutes of
11 continuing education, and the Indiana public defender
12 council;

13 (4) apply for and be authorized to accept any funds
14 which may be offered or which may become available from
15 the state, the federal government, private gifts,
16 donations or bequests or from any other source approved
17 by the commission to accomplish the purposes of this
18 chapter;

19 (5) prepare an annual budget request which includes all
20 anticipated costs of the county defender system,
21 present the budget to the commission for approval, and
22 submit it directly to the city-county council for an
23 appropriation;

24 (6) request and receive additional funds from the
25 city-county council if the budgeted allocation for the
26 county defender system for the compensation of assigned
27 counsel is exhausted;

28 (7) maintain one (1) or more panels of attorneys who

1 are available to serve on a case basis as needed and to
2 engage counsel from such panels as are necessary to
3 meet caseload demands, to avoid conflicts of interest,
4 and to stimulate the continual professional development
5 and interest of the private bar in the administration
6 of justice, and compensate them from the budget of the
7 county defender system;

8 (8) establish guidelines for the assignment of panel
9 attorneys;

10 (9) prepare, at a date specified by the commission, an
11 annual report of the operations of the county defender
12 system, including a statement of the number of persons
13 represented, the crimes and other proceedings involved,
14 and the amount and categories of expenditures made by
15 the county defender system;

16 (10) establish procedures for ensuring that staff
17 attorneys maintain reasonable workload levels in order
18 to provide a high quality of services;

19 (11) establish the terms of employment of staff
20 attorneys and other staff personnel, subject to
21 budgetary appropriations;

22 (12) prepare eligibility guidelines and procedures for
23 determination of indigency and submit the guidelines
24 and procedures to the commission for approval;

25 (13) keep and maintain proper financial records with
26 respect to the provision of defense services for use in
27 calculating the direct and indirect costs of all
28 aspects of the operation of the county defender system;

1 (14) develop programs and administer activities in
2 order to achieve the purposes of this chapter; and
3 (15) at his discretion, consult and cooperate with
4 professional bodies and groups concerning the causes of
5 criminal conduct, means for reducing the commission of
6 crimes, the rehabilitation and correction of those
7 convicted of crimes, and the overall improvement of the
8 administration of justice and the criminal laws and
9 procedures.

10 Sec. 10. (a) After January 1, 1981, eligible persons
11 are entitled to be represented in the following proceedings:

- 12 (1) cases involving persons charged with a crime as
13 defined by IC 35-41-1-2;
14 (2) cases involving children subject to adjudication as
15 delinquents;
16 (3) cases involving persons on probation against whom a
17 revocation petition has been filed; and
18 (4) cases involving persons who are in custody and
19 subject to extradition to another jurisdiction.

20 (b) Representation shall be made available as soon as
21 the person is arrested or detained or when a process
22 commences which could result in a loss of liberty.

23 (c) Representation shall be made available at the trial
24 and appellate levels. However, after the first appeal, the
25 county defender agency is not required to:

- 26 (1) pursue appeals which, in the opinion of the
27 director, are of a frivolous nature, or within the
28 jurisdiction of the state public defender; or

1 (2) pursue postconviction remedies which are within the
2 Jurisdiction of the state public defender,

3 Sec. 11. (a) The county defender agency shall make a
4 determination regarding the financial eligibility of persons
5 referred to or contacting the county defender agency as soon
6 as possible after the referral or contact is made.

7 Financial eligibility determinations shall be made according
8 to written policies and procedures adopted by the
9 commission,

10 (b) Determinations of ineligibility are subject to
11 review by a court at the request of the prospective client.
12 Any information or statements used for the initial
13 determination shall be considered privileged under the
14 attorney-client relationship,

15 (c) The county defender agency shall determine whether
16 the assets of the person exceed the amount needed for the
17 payment of reasonable and necessary expenses incurred, or
18 which must be incurred to support the person and the
19 person's immediate family. Assets to be considered in
20 making the determination shall include disposable income,
21 cash in hand, stocks and bonds, bank accounts and other
22 property which can be converted to cash within a reasonable
23 period of time and which is not needed to hold a job, or to
24 shelter, clothe, and care for the person and the person's
25 immediate family. Assets which cannot be converted to cash
26 within a reasonable period of time shall be considered as
27 assets equivalent in dollars to the amount of a loan which
28 could reasonably be obtained by using these assets as

1 collateral. If the person's assets, less reasonable and
2 necessary living expenses, are insufficient to cover the
3 anticipated cost of effective representation when the length
4 and complexity of the anticipated proceedings are taken
5 fully into account, the person is eligible for
6 representation by the county defender agency.

7 (d) A person who is determined to be eligible must sign
8 an affidavit, stating that all income and assets reported by
9 him are complete and accurate. In addition, the person
10 shall be informed that he is expected to report immediately
11 any change in his financial status to the county defender
12 agency.

13 (e) If the accused is determined to be eligible for
14 defense services in accordance with financial eligibility
15 guidelines and procedures, and if, at the time that the
16 determination is made, he is able to provide a limited
17 contribution toward the cost of his defense, that
18 contribution shall be required as a condition of continued
19 representation at public expense.

20 (f) The county defender agency shall determine the
21 amount to be contributed under this section; but the
22 contribution shall be paid to the county auditor who shall
23 deposit that amount into a separate fund of the county to be
24 known as the "county public defense fund." The amounts so
25 paid into the county public defense fund may be used for the
26 purposes of this chapter only. Any such amounts remaining
27 in the county public defense fund at the end of any fiscal
28 year do not revert to the county general fund but shall be

1 retained in the county public defense fund.

2 Sec. 12. (a) An attorney serving as assigned counsel
3 in the county may not receive any fee for his services other
4 than that provided in this section.

5 (b) Fees paid to assigned counsel shall be determined
6 by the commission. Attorneys shall be compensated on the
7 basis of effort, skill, and time actually, properly, and
8 reasonably expended. A fee schedule shall be prepared and
9 periodically revised by the director and approved by the
10 commission. The fee schedule shall establish separate
11 in-court and out-of-court rates with stated maxima for
12 felonies, misdemeanors, juvenile delinquency proceedings,
13 appeals and other matters.

14 (c) In case of lengthy or complex litigation, a fee in
15 excess of the maxima may be paid with the approval of the
16 director.

17 Sec. 13. (a) The budget of the county defender system
18 shall include funds for personnel, offices, equipment,
19 supplies, and other expenses necessary to perform the duties
20 of the county defender agency required by this chapter. The
21 budget shall also include funds for the payment of panel
22 attorneys appointed under the assigned counsel program.

23 (b) The personnel of the county defender system shall
24 include sufficient attorneys and support personnel necessary
25 to perform the duties required by this chapter.

26 (c) Staff attorneys and support personnel shall be
27 employed solely on the basis of merit.

28 (d) Removal of staff attorneys shall be only for cause

1 except during an initial six (6) month period during which
2 they shall serve at the pleasure of the director. An
3 attorney who is dismissed by the director may appeal to the
4 commission under regulations adopted by the commission.

5 SECTION 2. Notwithstanding the provisions of IC
6 33-1-7,5-4(d), the initial appointments to the county
7 defender commission established by SECTION 1 of this act
8 shall be made before June 1, 1980, as follows:

9 (A) the one (1) member under IC 33-1-7,5-4(b)(1) shall
10 be appointed to a term of two (2) years;

11 (B) the one (1) member under IC 33-1-7,5-4(b)(2) shall
12 be appointed to a term of three (3) years;

13 (C) of the three (3) members under IC 33-1-7,5-4(b)(3),
14 the appointing authority shall appoint and designate:

15 (i) one (1) member to a term of one (1)
16 year;

17 (ii) one (1) member to a term of two (2)
18 years; and

19 (iii) one (1) member to a term of three (3)
20 years; and

21 (D) of the two (2) members under IC 33-1-7,5-4(b)(4),
22 the appointing authority shall appoint and designate:

23 (i) one (1) member to a term of one (1)
24 year; and

25 (ii) one (1) member to a term of two (2)
26 years.

27 Thereafter, all appointments shall be under the provisions
28 of IC 33-1-7,5-4. This SECTION expires June 1, 1983.

1 SECTION 3. This act takes effect April 1, 1980.

END