

## About Indiana's Three State Public Defense Agencies

### **Introduction**

The State and Federal constitutions require the government to provide counsel to indigent people in many different types of cases. Specifically, public defenders can be appointed in criminal law matters, Children in Need of Services and Termination of Parental Rights cases, juvenile delinquency proceedings, mental health commitment cases, other proceedings where incarceration is a possibility (such as child support contempt proceedings), and appeals of such cases.

When the state provides a public defender to an indigent person, the public defender must provide effective representation. Indiana's structure for ensuring effective assistance of counsel is through three judicial branch agencies. The Public Defender Council provides training, research assistance, performance guidelines and support to public defenders/appointed counsel to develop competent representation. The Public Defender Commission develops practice case load standards. Counties that choose to meet the Commission's standards are eligible for partial reimbursement of the cost of providing counsel to indigent persons. The standards are designed to ensure effective representation. The State Public Defender seeks final judicial review of constitutionally infirm convictions due to ineffective representation, previously undiscovered evidentiary or forensic evidence errors and claims of actual innocence. The State Public Defender ensures incarcerated persons who have suffered harm due to ineffective assistance of counsel receive relief. Each of the three agencies has a unique and independent role in Indiana's decentralized system of public defense.

The [Indiana State Public Defenders' Office](#), created in 1945 and recodified in 2004 under [I.C. 33-40-1](#), provides direct representation to persons who are incarcerated in post-conviction proceedings which are the final review of convictions by State courts. They litigate meritorious claims of ineffective assistance of counsel, fundamentally flawed evidence or forensics and claims of actual innocence. Since this office often alleges trial or appellate counsel ineffective the independence of the State Public Defender is vital to avoid conflicts when providing this last judicial review for those who may be wrongfully convicted.

The [Indiana Public Defender Council](#) is comprised of all public defenders, including contracted pauper counsel, employees of county public defender agencies, and other attorneys regularly appointed to represent indigent defendants before trial courts and on appeal. The Council was initially a grant-funded project in 1976 and became a state agency in 1977 and was recodified in 2004 as under [IC 33-40-4](#). Its primary purpose is to improve the quality of representation to indigent persons who are entitled to appointed counsel. The Council also provides case assistance to individual members by preparing manuals, providing legal research, and conducting training seminars. The Council has also developed performance guidelines to inform its members of the best practices. The Council serves as liaison to local, state, and federal agencies, study commissions, and community groups in an effort to benefit criminal defense as part of the fair administration of justice.

The [Indiana Public Defender Commission](#), established in 1989 and recodified 2004 as under [IC 33-40-5](#), reimburses part of the cost of providing counsel in counties that choose to comply with

the Commission's [standards and guidelines](#). The Commission's focus is the systems for delivering effective representation by developing standards for representation of the indigent and enforcement of those standards in participating counties. The Commission reviews claims for reimbursement, determining whether counties are complying with Commission standards for caseloads, quality of representation, and attorney compensation. The Commission is the agency responsible for setting and enforcing standards of quality for the counsel that must be provided by the government in accordance with constitutional mandates. The Commission has only recently become an independent judicial branch agency, and was previously one of the agencies directly supervised by the Supreme Court under what is now the [Office of Judicial Administration](#).

### **Conclusion**

Indiana's decentralized, county-based public defense system is supported, in a different way, by each of the state agencies. The three agency structure ensures each agency will be devoted to its key mission and task without compromise. The separate functions and mandates avoid inherent conflicts of interest presented by the different responsibilities.