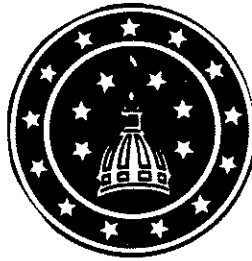


FINAL REPORT
OF THE
INTERIM STUDY COMMITTEE ON
PROBATION SERVICES AND INDIGENT COUNSEL



Indiana Legislative Services Agency
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Indianapolis, Indiana 46204

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"A committee is established to study certain matters related to the judicial system. In particular, the committee shall study all aspects of probation services. In addition, the committee shall examine the delivery and funding of defense representation of indigents in cases where the right to counsel has been established by law."

I. Study Topics

The Committee held six meetings and heard extensive testimony detailing programs and problems in probation and public defender services. Witnesses from across the state, including probation officers, administrators, juvenile programs advocates, judges, public defenders, and local governments testified on funding, quality control, and service delivery issues in the probation and indigent counsel areas.

II. Review of Testimony

A. Probation

1. Salaries: Average 1984 salary of probation officers was \$14,500; salaries vary widely among the 92 counties. The Indiana Judicial Center has recommended the following salary schedule:

Probation Officer Salaries

Starting Probation Officers

	<u>Salary Range</u>	
Class 1-9 ¹	\$17,325.00 ²	\$25,889.00

Deputy Chief Probation Officers(Supervisor)

	<u>Salary Range</u>	
Class 1	24,823.00	37,009.00
Class 2	22,127.00	32,741.00
Class 3-9	19,656.00	29,063.00

Chief Probation Officers

	<u>Salary Range</u>	
Class 1	27,305.00	40,709.00
Class 2	24,340.00	36,015.00
Class 3-9	21,622.00	31,969.00

¹This refers to the classification of counties according to IC 33-13-12-6 for judicial salaries.

²These are annual salary figures.

As of 1984, approximately 40 states provided a state subsidy for probation salaries. A state subsidy is called for by IC 11-13-2-3 but has not been funded since 1965. There were 600 probation officers in the state, as of March 1, 1985, according to the Judicial Center. The state has 140 probation departments in the 92 counties.

2. There is high turnover among probation officers, primarily due to low salary. Turnover averages 15% annually, resulting in a lack of consistency, experience, and community contacts. Some counties have one-third turnover in a year.
3. Probation deals with the majority of offenders in the criminal justice system; specifically, at any one time, 94% of juveniles and 69% of adults in the post-conviction system are on probation.
4. Caseloads averaged approximately 259 cases per officer in 1984, resulting in inadequate supervision and attention in many cases.
5. Probation user fees: A survey by the Indiana Judicial Center indicates approximately 20 departments are in counties which use these fees to supplant rather than supplement county funding for probation. Some other county councils are not appropriating the user fee money; the revenue is merely accumulating.
6. It cost counties about \$55 per probationer in 1983 to supervise under the current system and funding, which is less per probationer than the cost in 1982, due to more offenders on probation and fewer probation officers supervising them. It costs the state about \$15,000 per year to incarcerate an offender; the D.O.C. data for fiscal year 1984-1985 states that the average daily cost per offender to operate the state's adult and juvenile facilities is \$14,140, which includes personal services and operating and preventive maintenance expenses. No data was available on amortizing the capital expenditures.
7. Tightening up of criminal laws, sentencing provision, etc., are resulting in more and more probationers each year, with no additional resources or personnel to supervise this greater number of people.
8. Money allocated for special law enforcement objectives (e.g., drunk driving) goes to police and prosecutors to arrest and convict more offenders, but no money goes to probation to supervise or treat the additional people once convicted and placed on probation.
9. Suspended sentences help reduce prison overcrowding for the state, but IC 35-50-2-2 requires that a person be put on probation if a felony sentence is suspended.
10. The only supervisory alternative to probation in felony cases is incarceration; otherwise, the courts can do nothing. Probation is also an important alternative in misdemeanor cases for providing supervision.
11. Courts rely heavily on probation's pre-sentence reports and recommendations, in determining the sentence to be given the offender.
12. Probation officers are tested by the state, hired by the judge, and paid by the county. They have duties imposed by the state, including acting as a parole officer, and the state imposes minimum qualifications (such as a college degree).

13. Probation has three components: direct service, brokerage of services, and supervision.

14. There are numerous aspects to the criminal justice system. The total picture is not being seen by any one individual or group. It was suggested that a performance standard be set for those involved in criminal justice, measured by a reduction in crime. It was further suggested that a determination of effective crime control measures would best be made at the county level. State money could be used to structure creative probation or other local programs to have an impact on reducing crime.

15. There is a great need for specialized probation programs such as alcohol treatment services. Over 70% of probationers have alcohol-related problems, according to a survey of Indiana probation officers.

16. The Addiction Services Advisory Council is mandated by P.L. 36-1985 to work with probation officers, among others.

17. The smaller a county is, the less likely it is to have any special programs, although rural areas need them badly.

18. Indiana constitutionally mandates that offenders be rehabilitated.

19. Seven states have instituted intensive supervision which shows promise of being more effective than standard probation in reducing criminal violations although technical violations show an increase. Caseloads would have to be cut dramatically, though.

20. Some counties have no money in their budgets for juvenile placements; counties must pay for placement in state facilities. State juvenile facilities are very short on bed space.

21. The juvenile probation officer is the key, critical person in services available for young offenders.

22. In some counties (e.g., Lake) probation officers have suffered salary reductions and elimination of positions.

23. Some probation officers are exhibiting stress-related disorders (e.g., alcoholism, absenteeism, suicide) which seem at least partially attributable to low pay necessitating second jobs, food stamps, etc., as well as to heavy workload.

24. It was suggested that a merit system be implemented, rather than a patronage system, for appointment, promotion and retention of probation officers, including establishment of a grievance procedure.

25. Fines and increased court costs, user fees, victims' compensation funds, restitution, etc., impose ever greater costs on offenders, and it is probation officers who must attempt to get payment.

26. The movement nationally is to strengthen probation services, for example, with intensive probation and alcohol treatment programs.

II. Indigent Counsel

1. There is no comprehensive state plan for the delivery of defender services to indigents in criminal cases. This results in the following:

- a) no quality control to assure that we are getting what we pay for;
- b) no cost efficiency monitoring and no economies of scale, e.g., transferring all appeals to the State Public Defender to reduce total cost; and
- c) no cost containment provisions or contingency planning to avoid potential disasters for a small county's budget as a result of a major trial or death penalty case.

2. Lack of standards for:

- a) Indigency. The result is a large margin of error on both ends of the indigency determination; i.e., non-indigents are appointed counsel at public expense and indigents are denied appointment of counsel. Presently there is no provision for partial indigency to collect money from clients who are able to pay something towards the cost of the representation.
- b) Eligibility of attorneys to be appointed. The lack of standards in this area results in issues of competency and political patronage.

3. Economic disincentives to effective representation.

- a) Public defenders who are either salaried or contract employees are nearly all part-time. Since compensation is fixed and caseloads are flexible, increasing caseloads result in public defender cases competing with private cases for the attorney's time. This creates economic pressure to cut corners in the public defender cases.
- b) Inadequate compensation. In many counties, compensation ranges from \$50 to \$100 per felony case. In some counties which exhaust appropriations for public defense services prior to the end of the year, attorneys are required to wait up to six months before they are paid for services rendered.
- c) Support services are inadequate. Money is needed for investigators, secretarial support, expert witnesses and reimbursement for out-of-pocket expenditures.

4. Judicial Control. Judges hire and fire public defenders and appoint counsel under assigned counsel systems. This creates an appearance of a conflict of interest and may impair the integrity of the adversarial process. Public defenders in some counties are considered political patronage employees of the judge. A state commission and county boards to design and monitor public defender services are preferable to judicial control. In addition, judicial appointment and control of public defenders results in late entry of counsel in a case. This results in unnecessary

pre-trial detention which causes jail overcrowding and equal protection issues for indigents.

5. Miscellaneous.

- a) Trial counsel for indigents criminal defendants is required by the Indiana and U.S. Constitution but is wholly financed at the county level in Indiana. As a result of this funding structure, the quality of services is extremely variable from county to county. The issues of ineffective assistance of counsel are increasing, which result in denial of fundamental constitutional rights and wasteful expenditures for retrying cases.
- b) All previous evaluations of Indiana's public defender system over the years have recommended a state system to correct systemic defects.
- c) Over one-half of the states provide at least partial state funding for indigent defense at the trial level.
- d) Indigent defense services are organized on a state-wide basis in 17 states: Alaska, Colorado, Connecticut, Delaware, Hawaii, Kansas, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming.
- e) Three states have a central organization but are not responsible for providing services throughout the entire state: Kentucky, Nevada, and Ohio.
- f) The proposed legislation embodied in PD 5289 is most similar to the Ohio system.
- g) Counties should be able to select from among several options for public defender service delivery. Local control can be maintained but quality control should be implemented.

III. Recommendations

A. Probation

The Committee recommends the following:

- (1) Counties should be encouraged to establish unified probation departments, so that there is only one probation department per county. A single probation department per county should clarify lines of authority and responsibility, and form a structure which would assist the state in identifying and defining the proper role of probation in the overall state criminal justice system. Such an organizational change would provide a clearer channel should the state more closely oversee or provide funds for probation services.

The state has an interest in the effective delivery of probation services. A unified system should improve effectiveness, for example,

by centralizing communications and records concerning those on probation.

(2) The state should make available more resources to improve probation services, e.g., funding pilot programs and more training. A mechanism for evaluating the effectiveness of such programs and the overall effectiveness of probation should be established.

(3) As an incentive for counties to establish a unified probation system, the state should provide a subsidy for probation officers' salaries for those counties having a unified probation department as described above. The subsidy should be in an amount sufficient to allow counties to meet a minimum salary schedule similar to the one prepared by the Judicial Center of Indiana, which would be required by statute. Low salaries tend to decrease the effectiveness of probation services.

(4) The state subsidy for probation officers' salaries, already established by IC 11-13-2-3 but not funded since its passage in 1965, should be funded by a gallonage tax on beer (3 1/2 cents) and wine (5 cents). This method would raise about \$5 million.

(5) The establishment of intensive probation programs is recommended, with standards to be set by the Judicial Conference of Indiana. Initially, pilot programs could be established. Intensive probation involves more concentrated supervision of probationers and should lower the rate of probationers returning to crime. Prison overcrowding and early release have increased probation caseloads. This decreases the surveillance which is especially needed for those probationers more likely to return to crime. Thus, the goal of intensive probation is to lower the crime rate.

(6) The Committee learned some of the complexities of the Indiana criminal justice system. More coordination among the elements composing this complex system may be necessary in order to deal effectively with criminals from arrest to release. A study of the overall criminal justice system is recommended in order to obtain an overview, to locate any elements that are ineffective or unnecessary, and to determine how to insure the best possible coordination of efforts, with an aim of lowering the crime rate. Such a study would review the relationships among: prosecutors and their programs (e.g., pretrial diversion), defense counsel for the indigent, sentencing alternatives including community corrections programs and probation, use of county jails for misdemeanants instead of state prisons, the use of parole, and the role of the Department of Corrections in the overall system.

II. Indigent Counsel

The Committee recommends the following concepts in PD 5289 (1986) which would:

- (1) Establish an independent office of the state public defender in the judicial branch to serve as counsel for indigent defendants in post conviction and appellate proceedings;
- (2) Create a public defender commission that appoints the state public defender, establishes standards for defense services provided by public defenders, and, in general, administers the public defender provisions of the Indiana Code;
- (3) Create a state public defense fund to receive revenues from court costs taxed for this purpose, payments from partially indigent defendants who are represented by a public defender, and other revenues;
- (4) Allow counties to establish three-member public defender boards to create county plans for delivery of county defender services;
- (5) Provide 50% state reimbursement of county public defender expenses if county plans meet state standards;
- (6) Require an affidavit of indigency from a person seeking public defender services;
- (7) Require payments by persons found to be only partially indigent;
- (8) Give the state public defender commission rulemaking authority;
and
- (9) Add a \$3 public defender fee to costs in criminal, quasi-criminal, and certain juvenile cases.

The Committee considered but makes no recommendation for how the state public defender commission or the county public defender boards would be constituted, or their membership determined.