



# INDIANA PROSECUTING ATTORNEYS COUNCIL

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## EXECUTIVE DIRECTOR

**David N. Powell**

September 26, 2012

Adam Horst  
Director  
State Budget  
200 W. Washington St., Room 212  
Indianapolis, Indiana 46204

Dear Mr. Horst:

This letter constitutes the Indiana Prosecuting Attorneys Council's (IPAC's) agency overview/transmittal letter for our biennial budget request.

## AGENCY'S PROGRAMS AND FUNCTIONS

**1. Background.** Indiana Code § 33-39-8-5 defines the functions and duties of the Indiana Prosecuting Attorneys Council (IPAC):

The council shall do the following:

- (1) Assist in the coordination of the duties of the prosecuting attorneys of the state and their staffs.
- (2) Prepare manuals of procedure.
- (3) Give assistance in preparation of the trial briefs, forms, and instructions.
- (4) Conduct research and studies that would be of interest and value to all prosecuting attorneys and their staffs.
- (5) Maintain liaison contact with study commissions and agencies of all branches of local, state, and federal government that will be of benefit to law enforcement and the fair administration of justice in Indiana.

The IPAC is a non-partisan, independent state judicial branch agency and was created by statute in 1973. It is made up of Indiana's 91 prosecuting attorneys and their chief deputies and governed by a 10 member Board of Directors chosen from among the state's prosecuting attorneys. An organizational chart for the full-time staff is attached.

Other Indiana Code sections require the IPAC Executive Director to participate as a member of the Criminal Code Evaluation Commission, the Criminal Law and Sentencing Policy Study Committee, the Board for the Coordination of Programs Serving Vulnerable Individuals, the Indiana Criminal Justice Institute Board of Trustees, the State Council for Interstate Adult and Juvenile Supervision, and the Domestic Violence Prevention and Treatment Council. The IPAC Executive Director also serves as a member of the Supreme Court's Records Management Committee and on various other Supreme Court Committees when requested.

2. **Training Seminars:** The IPAC is the primary continuing legal education provider for Indiana prosecutors. Each year the IPAC conducts a number of training seminars. Two of these two and one-half day annual conferences are done in conjunction with the Indiana Attorney General's twice-yearly conferences (see, Ind. Code § 33-39-6-1(e)), but the majority of the instruction is provided and coordinated by the IPAC. Historically, 100-200 attorneys attend these conferences. The winter conference is held in Indianapolis and the summer conference rotates between the northern and southern portions of the state.

The IPAC, with the Child Support Bureau, also hosts an annual child support conference that is attended by prosecutors, judges, and case managers. This two and one-half day conference will typically attract roughly 450 attendees.

The IPAC also conducts a number of smaller conferences and workshops. In a typical year, the IPAC will conduct 14. Every two or three years, the IPAC will host an office administrator's conference. The IPAC also conducts an applied professionalism course specifically for prosecutors. This course is required for attorneys with less than three years in practice. (See Ind. R. Admis. B. & Disc. Att'y Rule 29 §3.)

Manuals from conferences are maintained on the IPAC website.

3. **Research Assistance to Prosecuting Attorneys:** Many prosecuting attorneys and their staffs would consider that the IPAC's most important function is the legal research assistance provided to prosecuting attorneys. Often these requests for assistance come in the middle of a trial when a prosecutor needs an immediate answer. Thousands of such calls are received each year as well as numerous email inquiries. We also receive requests from public officials at all levels of State and Federal Government, and Indiana Legislators at both the State and Federal levels. We have answered at least 2,500 – 3,000 requests for research assistance during each of the last 2 years. Many of these research requests involve considerable legal research on issues not yet decided by Indiana laws or court decisions. Conducting thorough research on complex and novel issues requires subscriptions to the two automated legal research providers, Westlaw and Lexis-Nexis.

The IPAC has a contract in place that has allowed all of Indiana's prosecutors access to Lexis-Nexis.

4. **Manuals:** Shortly after the IPAC began operations, its staff began assembling materials and producing manuals. Currently, the IPAC maintains the two volume *Indiana Prosecuting Attorneys Handbook*, the *Indiana Prosecuting Attorneys Trial Handbook*, the *Indiana Elements of Crimes and Lesser Included Offenses Handbook*, the *Indiana Juvenile Justice Manual*, and the *Indiana Prosecuting Attorneys Ethics Manual*.

The IPAC works to provide a current list and background information on expert witnesses. The IPAC also produces a monthly *Police/Prosecutor Update* (which prosecutors can distribute to local police agencies), and a weekly *Legislative Bulletin* when the General Assembly is in session.

**5. Statewide Prosecutor Case Management System (PMS):** For nearly thirty years, the IPAC has maintained a statewide computer system for prosecutors' offices that choose to participate. The ultimate goal was to provide the Indiana State Police with complete and accurate criminal history dispositional information in an electronic format while also developing a case management system for prosecutors. That goal has been accomplished with an electronic link between IPAC and the State Police for transmittal of criminal history information.

The PMS is currently installed and being used in 87 of the 91 judicial circuits. There are nearly 2.2 million unique cause numbers (court cases) that can be tracked in the system. The PMS is the primary source of criminal history information for the Indiana State Police Criminal History Repository, the database that is queried during criminal history background checks for employment and handgun permits. Software was developed to permit the immediate transfer of criminal history information, rather than a nightly transfer.

**6. Liaison Activities:** The IPAC continues to perform liaison activities with the Indiana General Assembly, testifying in each session on the abundance of criminal legislation introduced annually.

**7. Amicus Briefs:** When approved by the Council Board of Directors or when requested by the Indiana Supreme Court, or Court of Appeals, the Council will file amicus curiae (friend of the court) briefs on behalf of all prosecuting attorneys in the State.

## **ACCOMPLISHMENTS AND CHALLENGES OVER THE LAST TWO YEARS**

**1. Accomplishments:** The IPAC oversaw the fielding of the latest, web-based, version of its PMS. Additionally, interfaces have been established with the Department of Corrections' Statewide Victim Notification (SAVIN) system and electronic ticket filing is in place. By the end of the calendar year, the PMS should be mapped and fully interfacing with the court's case management system. Lake and Marion Counties have been linked to the PMS, but they will, by the end of the calendar year, have the PMS fully operational in their counties. During the fielding of the latest PMS version, the IPAC also supplied many counties with servers for the system's operations. Finally, the IPAC directed a review of the PMS code to establish its functionality. This review was the first ever conducted and was completed by an independent contractor in partnership with IDOA and Indiana Homeland Security. The results of that inspection will serve the IPAC well as other integration projects are identified.

The IPAC's by-laws underwent a significant re-write this last year. Inefficient and moribund committees were deleted and a more viable structure was adopted. The IPAC has established or reinvigorated an Executive Committee, a Capital Litigation Committee, a Child Support Committee, a Child Support Subcommittee, a Diversion and Deferral Committee, an Elder, Delinquency, Domestic Violence, and Sex Crimes Committee, an Ethics Committee, a Public Relations Committee, a Research Committee, and a Technology Committee.

Additional staff has been added and the staffing tables have been changed accordingly. The IPAC now has a chief of staff, a drug law enforcement prosecutor, and a child support caseworker. This allows the IPAC to provide better assistance on drug law enforcement and assistance to a broader audience on child support problems. For the first time, the IPAC is available to offer assistance on administrative law and standards of conduct issues. Additionally, a clerical position was downgraded from one with a \$59,902 annual salary to one with a \$23,000 salary. Clerical interns have also been employed in the last year.

Other accomplishments may seem less significant, but they have been tied to cost savings and the ability to provide better services to prosecutors. By leveraging the Westlaw and Lexis-Nexis on-line research providers, the IPAC was able to save money previously spent on the maintenance of its library. The IPAC has similarly reduced the amount of paper it uses for its courses by ensuring that instructor materials are made available to attendees before the conference. Finally, the IPAC worked with IOT to modernize its website providing a better user interface and resources for prosecutors.

**2. Challenges:** Given its accomplishments, the IPAC's past challenges should be clear. A challenge that was met came from the last two legislative sessions. During 2011, the IPAC played a role in helping legislators understand the issues inherent with sentencing reform and with the data they had been supplied. During the last session, the IPAC worked to improve Senate Bill 1, a bill that dealt with self-defense.

## **OBJECTIVES FOR THE NEXT BIENNIUM**

The IPAC's objectives for the next biennium are as follows:

**1. Complete Work on Criminal Code:** As noted, the IPAC is a member of the Criminal Code Evaluation Commission. The IPAC full-time staff is orchestrating the activity of approximately 60 council members and others to produce the first comprehensive criminal code since 1977. Since June, council members have devoted 1,700 man hours on this project. A draft should be completed in the near future, but it is likely the new code will not go into effect until July 1, 2014 at the earliest. Thus, the IPAC will be engaged in working to educate prosecutors, judges, legislators, law enforcement agents, and the public on the new provisions and working to assist with any necessary amendments. Additionally, the criminal code involves Title 35 (Criminal Law and Procedure), but new legislation affecting Title 9 (Motor Vehicles) will likely be addressed in the next biennium.

**2. Secure a New Contract for the PMS:** Although the IPAC has recently fielded the latest version of its PMS, the contract expires at the end of the fiscal year. The IPAC Board of Directors has mandated that a contract for the operation, improvement, and further development of the PMS will be competitively bid. This project should be completed during the current fiscal year, but fielding of any new system and the training of 1,500 users will continue well into the next fiscal year.

**3. Continue to Develop Database Interfaces:** The IPAC has been exploring participation in the Public Safety Data Interoperability and Integration Project. Our database will provide the most complete source of criminal history data to the project. The IPAC will continue working with State Court Administration to perfect the interface between our PMS and the court's system. Additionally, the IPAC is leading the effort to

perfect a body attachment registry for civil arrest warrants. This will allow counties to see warrants from other counties in child support cases when a person is arrested. Finally, the IPAC is contributing to the effort to have the Department of Child Services database system – the Indiana Support Enforcement Tracking System (ISETS) – or its successor interface with the State Court Administration’s system.

4. **Training:** The IPAC will continue to provide training with the two annual conferences and the child support conference remaining as the marquee annual events. A newly elected prosecutor course will be held following the 2014 elections. That conference is funded solely by the IPAC because newly elected prosecutors must be trained before they are sworn into office. As newly elected prosecutors bring new staff into their offices, it is likely, as in the past, that this conference will be attended by close to 450 individuals. We will also add a domestic violence conference and expect to increase our trial advocacy courses.

5. **Publications:** All of the IPAC manuals and handbooks must be revised during the coming biennium. Additionally, the IPAC is intent upon publishing an impaired driving manual for Indiana prosecutors and a drug law enforcement manual. Much staff time will be spent on building a legal brief bank for prosecutors to use when they confront various pre-trial and trial motions.

## **CHALLENGES FOR THE NEXT BIENNIUM**

1. **Increased Responsibilities for Prosecuting Attorneys:** When the IPAC was first created in 1973, prosecutors had no specific responsibility for adult protective services and they had no role in civil child support enforcement. No victims’ rights legislation was in existence. The Internet had not been invented and identity theft was not as rampant as today. The burden of these duties at the county level is now carried by prosecuting attorneys. IPAC responded to these new duties though training and legal assistance to prosecutors.

2. **The Law’s Increasing Complexity and Breadth:** The law never gets simpler but perhaps a few examples from some of the topics we have discussed at recent seminars will best illustrate this point. These topics have included Internet crimes, identity theft, antiterrorism issues, and immigration issues. The IPAC staff will be challenged to provide assistance to prosecutors facing these problems and to locate resources to assist.

3. **Decreased Federal Funding:** For many years the IPAC computer project was funded by federal funds. While some federal funds are still available for specific enhancements and implementation of the system, the lion’s share of the cost must now be borne by the IPAC. This is a large portion of our overall budget. A primary purpose of the computer project is to insure that the State Police have complete and accurate criminal history records. However, computerized case management systems have the additional benefit of providing prosecutors the means to more effectively manage their offices.

4. **Technology Competencies:** As noted, the IPAC, through its Technology Committee, has been working on developing a request for proposals as the current PMS contract will expire in June 2013. This process has revealed that the IPAC staff lack the depth of knowledge to assist prosecutors when issues with the PMS arise. Although the IPAC has been working closely with State Court Administration and others, without technical programming experience and legal expertise, the IPAC is challenged to expeditiously assist with programmatic changes and management.

## **AGENCY KEY PERFORMANCE INDICATORS**

The IPAC has not worked with OMB and the GEFP to develop performance indicators and measurements.

## **CHANGE PACKAGES**

1. **Chief of Staff:** In 2011, the IPAC Board of Directors authorized the creation of a new attorney position for a chief of staff (CofS). The manning table for the IPAC has remained the same for at least the last twenty-five years and this is the first new position created except for those funded with federal money.

The chief of staff's salary and fringe benefits are funded through the federal child support enforcement reimbursement funds (47525). The IPAC would prefer to have this position paid from the general fund (16670).

The IPAC CofS reports directly to the Executive Director and serves as the daily supervisor of the IPAC's administrative staff. The CofS works to coordinate and consolidate the work of other staff attorneys and oversees the office's logistical and procurement needs to include monitoring of the PMS.

The CofS assists the IPAC Board in the conduct of board meetings by controlling the agenda, producing the minutes, and accomplishing sundry other administrative requirements. The CofS serves IPAC subcommittees in accomplishing their assigned tasks and with their communications to the IPAC Executive Board. The CofS has lead responsibility for developing and monitoring the IPAC budget to insure that public resources are accounted for and that they are spent in accordance with established fiscal statutory and regulatory requirements. The CofS also develops IPAC personnel policies. The CofS ensures IPAC compliance with Indiana's Access to Public Records Act (APRA), and other administrative, ethical, and fiscal provisions. The CofS coordinates on behalf of the IPAC and the Executive Director with other judicial and executive branch agencies.

The CofS is available to consult with Indiana's prosecutors on questions involving public records, fiscal laws, professional responsibility, standards for employee conduct, and other administrative law issues. As any other IPAC attorney, the CofS serves as an instructor, manual author/editor, and committee staff attorney. The CofS assists prosecuting attorneys with ethical, fiscal, and other administrative law issues. The budgeted amount for this new assignment will be \$129,837 for salary and fringe benefits.

2. **Technology Resource Prosecutor (TRP):** The IPAC currently employs an attorney to assist prosecutors with their technology needs and to serve as the IPAC point of contact for the PMS vendor (position 10001397-01). The individual occupying this position will resign no later than December 31, 2012.

In order to better meet prosecutor's needs the IPAC must expand this service. The IPAC requires an attorney with experience in criminal law and who is conversant with information technology. The TRP will take the lead on state-wide issues related to improving practices in the design, modernization, use, sharing, and performance of information resources. The TRP's role includes developing recommendations for information technology management policies, procedures, and standards; and identifying opportunities to share information resources. The TRP will be responsible for maintaining and updating the IPAC website. The TRP will also serve as the project manager for the PMS.

This attorney will serve as the staff attorney for the Technology Committee and the Public Relations Committee. The TRP will serve as the IPAC's primary liaison with IDOA's contract law attorney, with IOT technology experts, with the State Court Administration's Judicial Technology and Automation Committee, and with other state agencies such as the State Police and Department of Corrections. The budgeted amount for this expanded service – the increase from the previous assignment – will be \$29,162 in salary and fringe benefits.

3. In considering the change packages, it should be noted that the downgrading of the clerical assignment reduced the salary and fringe benefits from \$84,665 to \$39,560.

## **OTHER**

The IPAC currently operates out of four funds: the general fund (16670); the drug prosecution fund (33410); a traffic safety resource prosecutor (TSRP) grant (60240) through the Indiana Criminal Justice Institute; and federal child support enforcement reimbursements (47525). The drug prosecution fund (see Ind. Code § 33-37-9-(a)(3)) was not being fully utilized. In 2011, the IPAC Board of Directors authorized the establishment of a drug law enforcement prosecutor. Similarly, although the child support enforcement reimbursement money can be used widely, the Board mandated that at least some of it be used to employ an expert in child support enforcement as well as an experienced child support caseworker. The grant funds allow us to employ an attorney who serves as the agency's TSRP.

Further information on these positions is as follows:

**1. Chief, Child Support Enforcement:** The Chief, Child Support Enforcement (C, CSE) serves as the Title IV-D Liaison for the IPAC with the Indiana Department of Child Services, as well as other branches and agencies of the federal and state governments. The C, CSE is the IPAC's principal advisor on Title IV-D law, policy, and federal and state directives on all matters affecting local IV-D program enforcement, resources, organization, and funding. The C, CSE is responsible for providing training to elected prosecutors and county Title IV-D staff and for the publication of informational materials.

The C, CSE also serves as the staff attorney for the Child Support Enforcement Committee.

With the aid of a child support caseworker, the C, CSE keeps Indiana prosecutors informed on developments and organizes the annual child support conference and numerous other regional, "best practice" training events. In the future, the C, CSE will continue with these efforts and look to identify other resources and training opportunities for those involved in child support enforcement.

**2. Traffic Safety Resource Prosecutor:** Often the most difficult cases for a prosecuting attorney to handle are impaired driving cases. They can involve more complex issues than many murder cases. The TSRP assists prosecutors in this area and with other traffic safety related issues. The IPAC TSRP provides legal research assistance to local prosecuting attorneys. Additionally, the TSRPs travel to prosecutors' offices to assist with trial preparation and/or to assist with trials as appointed special deputy prosecutors.

The TSRP maintains a brief bank on legal issues pertinent to impaired driving cases. The TSRP assists prosecutors in locating expert witnesses. This data, published on the IPAC website, is shared with American Prosecutors Research Institute. The TSRP will prepare and regularly update an impaired driving manual for distribution to every Indiana prosecuting attorney's office.

The TSRP provides training to law enforcement officers and prosecuting attorneys on the most effective methods of investigating and prosecuting impaired drivers and other traffic safety issues. To that end, the TSRP provides no less than six training opportunities per year for law enforcement officers and prosecutors on traffic safety related topics. These training opportunities may include: yearly statutory and case law updates that impact traffic and impaired driving enforcement or prosecution; legal and practical aspects of sobriety checkpoints; legal and practical aspects of seatbelt enforcement zones; National Highway Traffic Safety Administration field sobriety testing procedures and the legal aspects of field sobriety testing; pre-trial motions conferences for prosecutors with emphasis on impaired driving cases; ethical considerations in OWI prosecution courses; "Cops in Court" training sessions for police officers on how to testify in the courtroom and how to improve their report writing; impaired driving fatal crash reconstruction courses; and trial advocacy schools.

The TSRP facilitates the IPAC Mentor Program. The Mentors Group meets on a quarterly basis to discuss the latest developments in the prosecution of impaired driving cases in order to establish a network of prosecutors and police officers who specialize in impaired driving cases. The TSRP serves as the staff attorney for the Diversion and Deferral Committee and for a Criminal Code Evaluation Commission working group.

**3. Drug Law Enforcement Prosecutor:** The IPAC Drug Prosecutor provides legal research to Indiana prosecuting attorneys who request assistance investigating and prosecuting violations of Indiana Code Article 35-48. The Drug Prosecutor assists prosecutors' offices with trial preparation and participation in proceedings as an appointed special deputy prosecutor. In addition to criminal trial proceedings, the Drug Prosecutor participates in actions for forfeiture, law enforcement costs, and corrections costs under Indiana Code Chapter 34-24-1, as well as actions for civil and criminal remedies for racketeering and corrupt business influences under Indiana Code Chapter 35-45-6. The Drug Prosecutor enhances the ability of prosecuting attorneys to reduce illegal drug activity by obtaining training, equipment, and technical assistance and advises them on the standards and forms for investigative techniques in drug cases such as search warrants, trash pulls, protective searches, fly over for heat signatures, dog sniffs, and state wiretap investigations.



As a subject matter expert on Indiana drug offenses, the Drug Prosecutor develops a state-wide anti-drug prosecutor-based preventive law program; develops the curriculum for intermediate/advanced drug prosecution trial advocacy courses; develops, publishes, and updates the *Indiana Drug Law Enforcement Manual*; and assists other staff members with the publication of IPAC handbooks to insure inclusion of relevant drug offense commentary. The Drug Prosecutor partners with the TSRP in areas of common interest such as crime laboratories, toxicology, addiction treatment, and the rehabilitation of drug addicts. The Drug Prosecutor develops and publishes model predicate questions for the admission of drug testing evidence and collects and shares best practices to include trial briefs and motions. To facilitate and expedite the efforts of trial counsel, the Drug Prosecutor maintains a list of expert witnesses for both prosecution and defense witnesses.

The Drug Prosecutor develops short and long term legislative agendas and educates prosecutors on legislative developments. The Drug Prosecutor follows through by studying the impact of drug offense legislation as well as the study of the success (or failure) of the various sentencing tools available to the courts. In order to accomplish IPAC's legislative initiatives, the Drug Prosecutor conducts research on drug prosecution developments in other jurisdictions and studies the impact of drug legalization.

In addition to working with Indiana prosecutors, the Drug Prosecutor serves as a liaison with Federal authorities in order to coordinate state-wide drug prosecution efforts. The Drug Prosecutor also serves as the mentor and principal prosecution advisor to the Department of Toxicology and the Indiana State Police/Marion County crime laboratories on drug testing and trial testimony.

The Drug Prosecutor reports to the Chief of Criminal Law and is responsible to the Executive Director for the planning and submission of the drug prosecutor budget and for overseeing of the drug prosecution fund under the provisions of IC 33-39-8-6. The Drug Prosecutor also seeks grant monies for drug prosecution efforts, advocacy training, and task forces.

Respectfully submitted,

David N. Powell  
Executive Director