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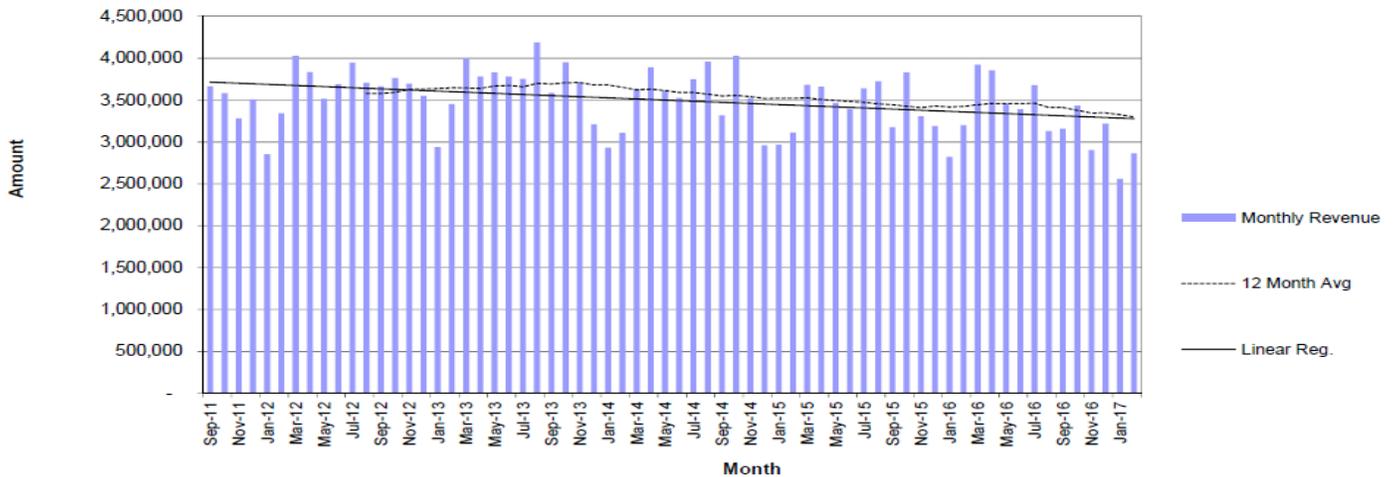
**House Bill 49 – FY 18-19 Biennium Operating Budget  
Office of the Ohio Public Defender (PUB) Testimony  
House Finance Committee, Transportation Subcommittee  
March 15, 2017**

Chairman McColley and Members of the Subcommittee, my name is Tim Young, and I am the Ohio Public Defender. Thank you for the opportunity to testify about my office’s budget for the upcoming biennium.

Because it’s imperative to understanding our current budget request and situation, I’ll start with a brief history. OPD’s current operating budget is drastically underfunded and the impact is compounded because the Agency’s budget suffers from a long history of underfunding. From FY 2000 to 2015, OPD’s operating budget grew only 7.7%, or half a percentage point per year. The Consumer Price Index during this same period increased 37%. While caseloads, workloads, and the prison population increased dramatically, OPD’s staff has decreased by nearly one-third.

In an attempt to address the severe underfunding of the current biennium budget, I immediately began to meet with OBM Budget Analyst and Director Tim Keen. Working alongside OBM, a message was delivered to the Governor’s Office about OPD’s funding. The Governor heard our message and intended to fund an additional seven positions for this budget through increased appropriations in Fund 5DY0 (the Indigent Defense Support Fund). Unfortunately, revenue in Fund 5DY0 has been highly volatile and on a downward decline. At the time this agency filed our FY 18-19 budget request, revenues were still averaging about \$3.4 million per month. As of today, however, they are closer to \$3.2 million per month, and looking ahead will likely be around \$3.1 million per month during the next biennium.

**Ohio Public Defender  
5DY0 Revenue Collections By Month**



Because of these declining revenues, the proposed increased appropriation meant to provide greater support to our operations will not be supported by revenue. I certainly appreciate the Governor's acknowledgement that our office is in desperate need of additional personnel and his efforts to provide relief. Unfortunately, basing the increase on a revenue stream that is falling and extremely volatile places OPD in the position of facing a flat, or possibly, a declining budget. We cannot responsibly add positions or increase county reimbursement based on a fund with declining returns. For us to achieve the budget the Governor intended, additional funds need to be appropriated.

OPD's mission is to protect the rights of indigent persons throughout Ohio by providing quality representation and leadership in the criminal and juvenile justice systems. Our vision is to be a nationally recognized leader in indigent defense that provides superior representation and advocacy, while affirming the dignity of our clients and operating with fiscal and professional integrity.

Based on this foundation, and working with numerous interested parties—including the County Commissioners Association of Ohio, the Ohio Judicial Conference, the Ohio State Bar Association, the Ohio Association of Criminal Defense Lawyers, and state legislators—the agency has identified five broad policy goals:

1. Improve the quality and efficiency of Ohio's indigent defense system by increasing state funding, supervision, and services.
2. Assess all state and county indigent defense systems to determine whether they are operating efficiently and effectively, and whether the systems are accountable and exhibit best practices.
3. Increase and improve OPD's ability to meet its statutory obligation to supervise county compliance with state standards, laws, rules, and policies.
4. Provide an increased level of services to counties, focused on training and development, and seek opportunities to coordinate shared services among counties and the state.
5. Increase compensation to indigent defense service providers, which will help retain quality lawyers and properly compensate them when they perform all necessary duties when handling a case.

Unfortunately, OPD has not been able to make progress toward achieving these goals this biennium. OPD's operating budget for each year of the current biennium fell \$1.4 million short of allowing the agency to continue its then-existing operations, putting these goals further out of reach.

The primary focus of this budget has to be to maintain the core functions of OPD's Columbus office, and making an effort to obtain the funding and staffing that have been reduced over the last 15 years despite increased demand. During the past decade and a half, the agency's operating budget has remained balanced only through continued attrition of full-time positions and

suppression of starting salaries and raises. When the state has dedicated additional funding to indigent defense, it has gone to county reimbursement—not to the agency’s operating budget.

For this reason we are asking the legislature for an additional General Revenue Fund appropriation of about \$1.1 million per year to be added to our main operating line item, 019401: State Legal Defense Services. This appropriation will fill the gap between our current revenues and expenditures, and allow us to remain solvent and continue our current level of services.

<b>Item</b>	<b>FY 18</b>	<b>FY 19</b>
<b>Revenues</b>		
GRF (401 & 405)	3,435,087	3,656,983
Fund 5DY0	6,324,000	6,324,000
Other non-GRF	1,753,530	1,753,530
<b>Total Revenues</b>	<b>11,512,617</b>	<b>11,734,513</b>
<b>Expenditures</b>		
Executive Budget Recommendation	12,636,767	12,903,879
<b>Annual Shortfall</b>	<b>(1,124,150)</b>	<b>(1,169,366)</b>

County reimbursement also needs significant additional funding. Some counties continue to pay the same rates and per-case caps established 30 years ago. Currently, the indigent defense system in Ohio is underfunded by more than \$35 million. In 2006, the Supreme Court of Ohio convened the Indigent Defense and Pro Se Task Force. That body recommended a budget of \$148.7 million for indigent defense. Today, that figure, adjusted according to the Consumer Price Index, would amount to \$177.0 million. The total current budget of \$140 million still falls well below the amount recommended more than 11 years ago. The reality today is that costs continue to grow while revenues decline. The GRF appropriations included in the Governor’s budget, when added to the most recent revenue estimates for fund 5DY0, result in the State reimbursing the counties at approximately 40 percent for the next biennium. Presently, it requires about \$1.4 million to raise the reimbursement rate one percent. To restore state reimbursement to 50 percent requires an additional GRF appropriation of \$13.2 million in FY 18 and \$14.3 million in FY 19.

But it must be noted that those estimates fund the system we have today. Because of chronic underfunding, the system we have today is in need of significant improvement. To fund a 30-year old rate system to meet constitutional and statutory requirements, and that pays fair compensation to appointed counsel, likely costs much more.

## County Reimbursement FY18-19

Item	\$3.3 Million per Month		\$3.2 Million per Month		Most Likely Scenario \$3.1 Million per Month		\$3.0 Million per Month	
	FY 18	FY 19	FY 18	FY 19	FY 18	FY 19	FY 18	FY 19
100% Cost	139,283,783	143,338,026	139,283,783	143,338,026	139,283,783	143,338,026	139,283,783	143,338,026
GRF	25,577,930	25,916,034	25,577,930	25,916,034	25,577,930	25,916,034	25,577,930	25,916,034
SDYO	32,868,000	32,868,000	31,872,000	31,872,000	30,876,000	30,876,000	29,880,000	29,880,000
Total	58,445,930	58,784,034	57,449,930	57,788,034	56,453,930	56,792,034	55,457,930	55,796,034
Rate	42.0%	41.0%	41.2%	40.3%	40.5%	39.6%	39.8%	38.9%
Amt for 50% Shortfall	69,641,892	71,669,013	69,641,892	71,669,013	69,641,892	71,669,013	69,641,892	71,669,013
	11,195,962	12,884,979	12,191,962	13,880,979	13,187,962	14,876,979	14,183,962	15,872,979
<b>Amt By ALI:</b>								
GRF 019501	10,746,392	12,372,917	11,702,398	13,329,335	12,658,404	14,285,753	13,614,410	15,242,171
GRF 019403	95,031	106,383	103,485	114,606	111,939	122,829	120,393	131,053
GRF 019404	354,539	405,679	386,079	437,038	417,619	468,397	449,159	499,755

Adequately funding indigent defense systems is necessary for a number of reasons. The justice system is, by design, adversarial. When one side is underfunded and lacks quality oversight, the system cannot function as intended. There is an increased risk of innocent Ohioans going to prison. Inappropriately excessive punishments become reality. Increased appeals, increased post-conviction litigation, a growing distrust of the justice system, and an ever-increasing prison population will continue if indigent defense remains in the underfunded, unaccountable state it is in today.

Like many states, Ohio is taking a critical look at the outsized growth of its criminal justice system over the past three decades. A high-quality indigent defense system helps ensure that the right people are in prison, serving the right sentences. And well-trained, adequately supported defense counsel are the most likely obstacle between an innocent Ohioan and a wrongful conviction. Fixing Ohio's long-neglected indigent defense system *will* cost the state more than it currently spends on the system, but savings will be realized in other areas of the criminal justice system. Local jail populations and operating costs will stabilize, or even decrease, as cases are processed more quickly and efficiently, and as defense attorneys identify alternative placements or monitoring systems for clients awaiting trial. Ohio's prison system will also benefit, as more sentences are legally sound and appropriate, and as more clients are diverted to appropriate community alternatives. Ohio's courts will become more efficient and save time and money, as defense attorneys become more prepared to proceed with cases, better able to represent clients, and less likely to commit constitutional errors that result in legal appeals.

Chairman McColley, Members of the Subcommittee, thank you for this opportunity to testify. I hope you agree that Ohio's indigent defense system needs significant additional state support. I will be happy to answer any questions you may have.