



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony Regarding the Budget of the Ohio Public Defender Commission HB166, Sponsor Representative Oelslager

Chairman Greenspan, Ranking Member Skindell, and members of the Finance Subcommittee on Transportation. I am Tim Young, the Ohio Public Defender. Thank you for the opportunity to testify regarding the budget of the Ohio Public Defender Commission.

The Ohio Public Defender Commission supports and appreciates Governor DeWine's proposed budget for indigent defense. The Public Defender Commission has two primary requests: First, that an additional \$1.5 million be allocated to the operating budget of the Office of the Public Defender (OPD) in order to minimally meet our statutory duties and to be able to provide oversight and accountability for the significant increase in funding to county reimbursement for indigent defense. Second, the OPD asks for a minor statutory change that will allow OPD, when appointed by a court, to bill for legal fees in the same way as all other appointed counsel across the state.

It is important to note that OPD actually oversees four separate budgets:

1. The OPD operational budget funds the State Public Defender's Office, which is primarily used to hire staff to help meet our statutory duties prescribed in Revised Code 120 – among which is oversight and administration of the reimbursement funds;
2. The reimbursement budget funds provides reimbursement to all 88 counties for the county-level costs of indigent defense;

3. The operational budget for OPD's branch offices provides funding for the county public defender offices maintained by the OPD in Athens, Ross, Trumbull, and Washington counties as a result of those four counties contracting with the OPD to provide indigent defense services in those respective counties. Contracting with the OPD to provide a county public defender office is one of five methods available to counties to provide for indigent defense;
4. The fourth budget solely serves as a pass through to the Ohio Legal Assistance Foundation – or Legal Aid, which is an agency that serves needy Ohioans on civil matters. Legal Aid does not provide indigent defense services, so their budget does not impact defense representation.

With those four budgets in mind, the Governor's additional funding of \$60 million dollars is for the reimbursement budget alone. The reimbursement budget funds do not impact, and are not available for, the operational budget of OPD. I also note that the Legal Aid budget is increasing due to interest rate increases in the banking industry, and interest earned on lawyer trust accounts generates revenue for Legal Aid. The Legal Aid budget in no way contributes to indigent defense. In the Governor's proposed budget, when you see an increase to the bottom line of OPD's overall budget, it is due to an increase in funding in reimbursement to the counties - and the increase in pass-through funding to Legal Aid. There was no increase in funding for the operations of OPD.

OPD, and the statewide indigent defense system, suffer from severe underfunding. This underfunding, combined with a patchwork of indigent defense delivery models at the county level, has led to an ineffective and inefficient indigent defense system for Ohioans. Despite increasing caseloads, increasing demands, and inflationary costs, funding for OPD's



operating budget increased only 7.7% from FY 2000 to FY 2015. During that same time period, the Consumer Price Index increased 37%. The cost and size of Ohio's criminal justice system consistently grows 2.5 – 3% annually, but funding has not been allocated accordingly. As a result, in 2015, OPD was forced to lay off staff and make drastic choices about which statutory duties OPD would be able to fulfill. The OPD's two requests – \$1.5 million dollars in funding and a language change for the billing process – are made so that OPD will have the necessary funding for staffing to minimally meet our statutory duties.

The OPD cannot continue on the path it has been on for 15 years of being underfunded and understaffed. Despite underfunding and understaffing, the quality of the OPD's client services has never faltered. This is a testament to the excellence of the attorneys, investigators, and staff at the OPD. That said, the OPD must hire additional staff persons in order to meet our statutory duties to provide services – which include overseeing the indigent defense system in Ohio and ensuring the significant dollars that Governor DeWine has proposed be added to reimbursement are properly distributed and used.

The OPD is grateful to Governor DeWine for his investment in county-level indigent defense through an allocation of an additional \$60 million toward county reimbursement, which brings the GRF funding for reimbursement to approximately \$90 million. However, to oversee that the reimbursement funds are properly distributed and that counties are using this investment of \$60 million additional dollars to appropriately provide for indigent defense, requires oversight that OPD is currently unable to provide due to the severe underfunding to our operating budget.

OPD's reimbursement staff must review county reports to ensure compliance with the standards and guidelines and notify the county if it is not meeting these requirements. This



must be done for all of 13,000 - 14,000 requests for reimbursement OPD receives each month. Unfortunately, OPD is not fulfilling this statutory obligation to the extent necessary because we only have resources for three staff members to fulfill these duties. Distributing taxpayer dollars is a duty we undertake seriously, and it is our duty to make sure we do it responsibly and effectively. It is imperative that OPD receive funding for additional staff so that we can provide the statutorily required oversight and put in place guardrails against misuse of public funds for Governor DeWine's proposed \$90 million investment in indigent defense.

OPD's second request is a statutory language change to ensure that OPD does not lose funds from our operating budget when one of our attorneys is appointed to a case by a court. The proposed change is included in the addendum attached to this testimony. When the OPD is appointed to represent an individual in a county, the OPD is required by R.C. 120.06 to first subtract the reimbursed percentage (currently 42%) from the legal fees and submit the remainder of the attorney fees (currently 58%) along with 100 percent of the expenses, for payment by the county. The result of subtracting the reimbursed percentage is that the OPD is paying the remaining amount from its operating budget instead of from the subsidy budget. The proposed language change would correct this and allow the OPD to submit 100% of its legal fees and expenses to the county, the county would then pay the bill, and the bill would then be submitted to the OPD by the county for reimbursement, allowing the reimbursement payment to come from the subsidy budget. This change is particularly important given Governor DeWine's recommendation of reimbursement at 70 – 75%. The larger state contribution would result in a greater amount of money coming out of OPD's operating budget instead of the subsidy budget, resulting in a loss of approximately \$200,000 to the OPD, which equals the salaries of two staff people, including benefits and overhead.



Ohio's system of paying appointed counsel, has wide variances and artificially suppressed rates, which result in increased costs in other areas of the criminal justice system, including jail and prison populations and costs.¹ Good defense attorneys can reduce societal costs and improve public safety. But, as the data shows, good attorneys continue to leave the defense practice because the rates are so low. Numerous counties have kept rates the same for over 20, even 30 years, with no adjustment for inflation. Recent studies of outcomes in indigent criminal cases have found that Ohio's chronic underpaying of appointed counsel leads to worse outcomes for people who are involved with the criminal justice system.² This is why the Office of the Public Defender, the County Commissioner's Association of Ohio (CCAO), Americans for Prosperity, and the ACLU of Ohio support the establishment of a legislative task force to study Ohio's indigent defense system. The task force would make recommendations regarding any reforms that may be needed to ensure Ohio is utilizing the best practices. The CCAO is also requesting the State provide 100% reimbursement to the counties for indigent defense. The OPD is in agreement with and supportive of this proposal as well.

While OPD supports these other objectives related to indigent defense, OPD's two main requests, which are imperative for the appropriate administration of justice and tax payer dollars, is an increase in OPD's operational budget and a minor statutory change. OPD's operational budget has been neglected to a greater extent than reimbursement to the counties

¹For additional studies supporting the link between low attorney pay and poor outcomes, see also: Iyengar, R. (2007). *An Analysis of the Performance of Federal Indigent Defense Counsel*; and National Bureau of Economic Research – Harvard University and Roach, M. (2010). "Explaining the Outcome Gap between Different Types of Indigent Defense Counsel: Adverse Selection and Moral Hazard Effects," available at Social Science Research Network: <http://ssrn.com/abstract=1839651>.

²Roach, Michael A., *Indigent Defense Counsel, Attorney Quality, and Defendant Outcomes*, American Law and Economics Review, May 2014; and Cohen, Thomas H., *Who's Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes*, Social Science Research Network, 2011. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1876474.



and results in OPD's present inability to provide the oversight that \$90 million of tax payer money warrants, and to meet our other statutory responsibilities within the justice system. OPD's underfunding is inconsistent with good government practices and cannot continue. OPD asks this committee to support the two requests I have presented – allocating \$1.5 million to our operating budget and including the statutory language change for OPD's billing process.

Thank you for the opportunity to testify before your committee. I am happy to answer questions at this time.



ADDENDUM

HB166 Proposed Amendments

Funding Amendment

SECTION 371. 10. PUB OHIO PUBLIC DEFENDER COMMISSION						50740	
General Revenue Fund						50741	
GRF 019401 State Legal Defense Fund	\$	4,679,317	<u>6,179,317</u>	\$	5,034,523	<u>6,534,523</u>	50742
Services							

Statutory Language Amendment

Ohio Revised Code 120.06

(D)

(1) When the state public defender is designated by the court or requested by a county public defender or joint county public defender to provide legal representation for an indigent person in any case, other than pursuant to a contract entered into under authority of division (C)(7) of section 120.04 of the Revised Code, the state public defender shall send to the county in which the case is filed a bill detailing the actual cost of the representation that separately itemizes legal fees and expenses. The county, upon receipt of an itemized bill from the state public defender pursuant to this division, shall pay the state public defender each of the following amounts:

~~(a) For the amount identified as legal fees in the itemized bill, one hundred per cent of the amount identified as legal fees and expenses less the state reimbursement rate as calculated by the state public defender pursuant to section 120.34 of the Revised Code for the month the case terminated, as set forth in the itemized bill;~~

~~(b) For the amount identified as expenses in the itemized bill, one hundred per cent.~~

