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House Bill 64 – FY 16-17 Biennial Budget
Office of the Ohio Public Defender (PUB) testimony
Senate Finance Committee, Corrections Subcommittee
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Chairman Uecker and Members of the Subcommittee, my name is Tim Young, and I am the Ohio Public Defender. Thank you for this opportunity to testify about my office's budget for the upcoming biennium.

As you know, the House increased appropriations dedicated to county reimbursement to a level that would allow the state to reimburse counties for 50 percent of the counties' costs of providing indigent defense services. While we greatly appreciate the House's financial commitment to indigent defense services, increased reimbursement is only one step the state needs to take to address the problems in Ohio's indigent defense system.

Improving – not just funding – Ohio's indigent defense system

For more than 20 years, Ohio has known that its indigent defense system is inefficient, ineffective, and in need of systemic reforms.¹ My office – in consultation with legislators, county commissioners, and numerous interested parties – has developed a three-part proposal that would be an important first step toward addressing the shortcomings of Ohio's indigent defense system, ensuring that the system uses taxpayer money appropriately, and establishing accountability for the state's expenditure of funds:

1. Codify the state's commitment to reimburse at least half the counties' costs of providing indigent defense services.
2. Allow my office to establish a uniform set of hourly rates and per-case caps for appointed counsel.
3. Evaluate local delivery systems and assist counties in efforts to meet system standards and improve accountability.

The House has taken the first step, by increasing reimbursement to 50 percent. But if we don't also implement reforms to improve the system, all we are doing is funding half of a broken system.

¹ *Report of the Supreme Court Task Force to Study Court Costs and Indigent Defense*, submitted to the Ohio General Assembly by Justice Craig Wright, Sept. 1992. *Report and Recommendations of the Ohio Supreme Court Task Force on Pro Se & Indigent Litigants*, April 2006.

Because each county establishes a schedule of hourly rates and per-case caps, compensation for appointed counsel varies widely. A defendant in one county is represented by an attorney making \$60 per hour, while another defendant facing the same charge in a different county is represented by an attorney making only \$30 per hour. Recent studies of outcomes in indigent criminal cases have found that Ohio's chronic underpaying of appointed counsel leads to worse outcomes for their clients, including longer sentences.² This results in increased costs in other areas of the criminal justice system, including jail and prison populations.³

Additionally, my office is charged with supervising the compliance of county indigent defense systems with the rules and standards established by the state public defender commission.⁴ But years of budget cuts and flat funding have left us without the resources to provide oversight, and the state's diminished financial contribution to the system has left the state with little leverage to encourage improvements in county systems.

Increasing state reimbursement to at least 50 percent and giving my office the resources we need to assess and provide assistance to county systems will give the state the leverage, resources, and information it needs to improve the provision of indigent defense services and to ensure state funds are used effectively. And, we must also ensure that rates paid to appointed counsel are consistent across the state and sufficient to allow court-appointed attorneys to meet constitutional standards of representation.

To implement these reforms, the state would need to increase its investment in the indigent defense system by about \$20 million from its FY 2015 funding levels. The 2006 Task Force that assessed Ohio's indigent defense system found that: "Funding dedicated to indigent criminal defense in Ohio ... totals \$128.8 million in fiscal year 2007. The task force believes, based on its understanding of the needs of the system, that \$148.7 million is a more appropriate figure." With the additional state funds proposed here, Ohio will still be spending less on indigent defense than was recommended nearly a decade ago.

If HB 64 only increases reimbursement, without implementing any system reforms, one of two outcomes will occur: either the state will pay for 50 percent of an indigent defense system that continues to fail to meet basic minimum standards of quality and efficiency; or the system will be held to minimum quality standards, with counties forced to bear the cost of enacting those reforms.

² See Roach, Michael A., *Indigent Defense Counsel, Attorney Quality, and Defendant Outcomes*, American Law and Economics Review, May 2014. 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.

³ For 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>.

⁴ R.C. §120.04(B)(3).

Central office solvency

The other focus of our budget request is ensuring fiscal solvency for our central office. Over the past several years, our operating costs have been gradually increasing, but our revenue sources have remained flat. Based on current projections, our central office's operating budget will be out of structural balance in fiscal year 2017.

My office provides an array of services —direct representation to clients, reimbursement to counties, support to practitioners —and about 80 percent of our budget pays for our personnel. If we need to cut costs, we have to cut people. And that means cutting services.

In fiscal year 2001, the state office had 169 full-time equivalent positions; now, we have only 138. The funding levels in HB 64 will allow us to keep only 132. We have cut personnel and reduced services for a decade and a half, despite increasing caseloads statewide, growing prison populations, and many dozens of new criminal laws enacted by the General Assembly.

I would love to have even a fraction of the employees we have lost over the years. But at the very least, I ask this Subcommittee to ensure that my office can remain fiscally solvent, retain our current staff, and not be forced to once again reduce the services we provide throughout the state.

Indigent defense reform is criminal justice reform

Like many states, Ohio is taking a critical look at the outsized growth of its criminal justice system during the past three decades. Over the past few years, the General Assembly has enacted House Bill 86 and Senate Bill 337, and created the Criminal Justice Recodification Committee. Ohio's indigent defense system is integral to the success of these attempts to right-size Ohio's criminal justice system.

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 costs will stabilize or decrease, as defense attorneys identify alternative placements or monitoring systems for clients awaiting trial, and as cases are processed more quickly and efficiently. Ohio's prison system will benefit, as more sentences will be legally sound and appropriate, and as more clients are diverted to appropriate community alternatives. And Ohio's courts will realize efficiencies and savings, as defense attorneys are more prepared to proceed with cases, better able to represent their clients, and less likely to commit constitutional errors that result in legal appeals.

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

Proposed appropriation changes

Beginning to reform Ohio's indigent defense system

The following line item appropriation amounts would ensure long-term solvency for the central office, allow the central office to assess and assist county indigent defense services, establish a uniform appointed counsel rate, and reimburse the counties for 50 percent of an improved system:

GRF	Title	FY 2016 House	FY 2017 House	FY 2016 requested total	FY 2017 requested total
019401	State Legal Defense Services	3,020,855	3,020,855	4,409,094	4,862,335
019403	Multi-County State Share	1,960,463	1,977,325	1,970,578	1,991,655
019404	Trumbull County State Share	545,658	552,337	545,658	554,007
019501	County Reimbursement	21,128,268	21,128,268	28,026,628	29,377,821