

**STATEMENT OF MARK A. STANTON  
CHIEF PUBLIC DEFENDER  
CUYAHOGA COUNTY, OHIO**

**TO THE FINANCE COMMITTEE  
OHIO SENATE**

**IN SUPPORT OF H.B. 5**

**October 22, 2019  
2:30 p.m.**

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**Chairman Dolan**

**Vice Chair Burke**

**Ranking Member Sykes**

Thank you for the opportunity to provide the instant perspective in support of H.B. 5, a bill that will help enable criminal defendants to receive legal representation from public defender's offices staffed by experienced attorneys. By providing some student loan reimbursement for assistant public defenders who commit to service for at least three years in their respective public defender offices, H.B. 5 promotes the interests of justice in two ways:

- First, by enabling public defender's offices to attract a diverse pool of dedicated and talented attorney applicants who might otherwise be forced to forego this employment opportunity because of burdensome student loan debt.
- Second, by enabling public defender's offices to retain attorneys for a sufficiently long tenure to reap the benefit of the considerable training and mentoring that must be invested to enable that young attorneys transition from law school students to effective advocates who, in a matter of months, must be ready to represent clients facing some of the most dire consequences available in our society, from loss of children to decades of imprisonment.

In discussing these two benefits of HB 5, I am fortunate to be the Chief Public Defender of an office that possesses the benefit of veteran assistant public defenders. As I will discuss, I am highly concerned that, without HB 5, it will be extremely difficult for public defenders, particularly those in smaller counties, to provide the experienced legal representation often needed in cases of increasing complexity.

## **Expanding the Applicant Pool**

In my capacity as a Public Defender in a large office, one of my most important responsibilities lies in hiring good people. My Public Defender experience, as well as having spent more than three decades in private practice in association with attorneys from public defender's offices, allows me to state definitively that no one seeks to become an assistant public defender for the money. Our attorneys are not big-firm rejects. Rather, they have chosen a path of public service dedicated to defending the indigent because they believe in helping others and in the equal protection of the law. They understand that they will not become affluent in this job.

The problem is apparent. Although some law graduates desire to be public defenders for these noble reasons, the financial burden of paying more than ten thousand dollars per year in student loan debt is a fixed-cost burden that cannot be ameliorated by driving a less expensive car, living in a cheaper apartment, or substituting hamburger helper for filet. Some promising lawyers who could provide great assistance to this State as assistant public defenders simply cannot make ends meet because of the 800-pound gorilla that appears at the end of every month – the student loan bill. As a result, these young attorneys are unable to accept, much less apply, for assistant public defender positions.

Sadly, those who find themselves in this scenario are more likely to come from middle- and lower class incomes, which underscores the reason that they had to incur considerable student loan debt initially. As a result, public defender's offices are off-limits to attorneys who could provide expanded diversity and, in some cases, provide many of our clients with the assurance that derives from representation by an attorney who understands the client's personal circumstances, who has walked the client's neighborhood, and has endured the client's hardships. It is an unfortunate state of affairs in Ohio - and in the country at large - that there are

a disproportionate number of minority attorneys who perceive employment in a public defender's office to be a non-starter.

### **Retention**

Even those attorneys who find a way to overcome the financial hurdles attendant to beginning their careers as assistant public defenders are often forced to leave this position, albeit reluctantly, because of rising costs after the first year or two in practice. For some, the exodus from school coincides with, or precipitates, a desire to start a family. Now the young assistant public defender and spouse confront added household costs, including the costs of child care for many families where both parents work outside the home. And, once again, the student loan bill never recedes. It is oblivious to the financial strains of a growing family. Accordingly, young assistant public defenders have to look elsewhere.

What is particularly frustrating for a public defender's office is that these young and dedicated attorneys are leaving after considerable time and expense has been devoted to expedite their development as criminal litigators. In an attorney's first year, considerable time needs to be allocated to developing basic litigation skills. While much is accomplished via learning by doing, supervisors and more seasoned attorneys commit substantial time, either formally or informally, to mentorship. In addition and at the expense of the individual office, many young assistant public defenders throughout the state participate in extended trial or appellate training seminars. This participation includes the National Defender Training Project's five-day training seminar at the University of Dayton; it is attended by assistant public defenders from all areas of the state, and it provides a distinguished faculty brought in from around the country. This type of training is necessary if a young assistant public defender is going to appear in court and represent parents in permanent custody cases, or persons charged with felonies, either in juvenile

court or the court of common pleas. When those identical attorneys are forced precipitously to make career changes because of the financial constraints created by an inability to satisfy their student loan debt, the fruits of the first two or three years of mentoring and training are bestowed upon a private law firm which, quite frankly, does not require State-subsidized training for their laterally hired former public defender turned associate.

### **The Cuyahoga County Experience**

These observations are not unique to Cuyahoga County. To the contrary, the Cuyahoga County Public Defender's Office has been blessed to have a number of veteran attorneys among our ranks. We are uniquely situated in Cleveland because we have the requisite resources to develop budding talent by employing law clerks from two different law schools during the school year. Moreover, securing a position with us as an assistant public defender rarely requires relocation, particularly for new graduates of The Cleveland Marshall College of Law or the Case Law School. Since Cleveland is a larger metropolis, our new attorneys' spouses and significant others can find employment more easily if they are moving to the Cleveland area. In truth, most of the other county public defender offices do not have these demographic and geographic advantages. Relocation to a small county, with a small salary, plus a large student loan debt is an equation that does not compute equitably. Today, our colleagues in other counties are confronted daily with the reality of assigning less experienced attorneys to cases that demand a more seasoned hand.

Quality and experience can never be minimized. As a result of our ability to attract and retain quality personnel, our attorneys include two lawyers who placed first on the Ohio Bar Exam in their respective years. Our appellate attorneys appear frequently in the Ohio Supreme Court, including representing defendants in high-profile death penalty cases. Our trial attorneys

litigate aggressively and consistently; in the past ten days, we have secured complete acquittals in two rape trials, one of which carried a potential penalty of life imprisonment. These concrete examples reflect the advantages of being able to attract and retain good people. However, there is no guarantee that our veteran office would have sustained its identity if, in the 19980s and 1990s, our 20- and 30- year veterans had been confronted with the escalating costs of higher education that have been foisted upon our younger attorneys. Moreover, we are now confronted with the authentic problem of continually rising student loan debt; our ability to retain a veteran office may well be severely tested in the very near future.

By earmarking its funding to attorney shortage areas - defined as locations where average attorney caseloads are highest - HB 5 is not only providing critical funding, it is providing that needed funding in a cost-effective manner. The necessity to attract and retain good attorneys is most acute when attorneys are overworked. In our experience, a high-quality attorney with experience can handle a larger caseload more effectively than an inexperienced attorney can manage a smaller caseload successfully. The learning curve begins to flatten after several years. It is for this recurrent reason that overworked offices cannot afford the cost of the revolving door.

On behalf of the dedicated attorneys of the Cuyahoga County Public Defender's Office, on behalf of our brother and sister defenders throughout the State, and most importantly, on behalf of the thousands who depend upon our legal representation with the hope that the Constitutional guarantee of the effective assistance of counsel is not a meaningless platitude, we ask that you pass HB 5. For when this State ensures justice for the poorest among us, it ensures justice for all. And when this State fails in that important endeavor, can any of us state resolutely that we are faithful stewards of the Constitutional legacy entrusted to us?