

**STATEMENT OF CULLEN SWEENEY
CHIEF PUBLIC DEFENDER
CUYAHOGA COUNTY, OHIO**

**TO THE FINANCE COMMITTEE
OHIO SENATE**

In Support of Am. H.B. 150

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Chairman Dolan
Vice Chair Gavarone
Ranking Member Sykes

Thank you for the opportunity to provide this statement in support of Amended House Bill 150, a bill that will help enable criminal defendants to receive legal representation from experienced attorneys and will help ensure that prosecutor's offices have seasoned attorneys as well. My remarks will be confined to addressing the benefits of HB 150 from a criminal defense perspective, *i.e.* examining the positive effects the bill will have on public defenders and private attorneys who are devoting a significant portion of their practice to representing indigent criminal defendants (collectively "defense attorneys").

At the outset, I understand the assistant public defenders in my office will not receive any student loan relief from H.B. 150. Unlike many public defender offices throughout the State, the Cuyahoga County Public Defender's Office has been blessed to have a number of veteran attorneys among our ranks. There are several reasons for this. We are one of the fortunate county public defender offices that have contractual parity with our county prosecutor. We are situated in Cleveland, which is not an attorney-shortage community, where we can develop budding talent by employing law clerks from several different law schools during the school year. Coming to work for us as an assistant public defender oftentimes does not require relocation, particularly for new graduates of The Cleveland State University College of Law or the Case Law School. And because Cleveland is a larger metropolis, our new attorneys' spouses and significant others can more easily find employment if moving to the Cleveland area.

But many, if not most, of the other county public defender offices in Ohio do not have these contractual, demographic and geographic advantages. Moving to a small county, with a small salary, plus a large student loan debt is an equation that does not add up. Today, our

colleagues in other counties are feeling the pinch of having less experienced attorneys assigned to cases that demand a more seasoned hand.

By providing some student loan relief for defense attorneys, H.B. 150 promotes the interests of justice in several 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 the press of student loan debt.
- Second, by enabling private-practice attorneys, particularly those in counties that do not have an institutional public defender's office and thus rely solely on appointed counsel, to spend the time necessary to effectively defend their clients. That necessary time includes sometimes working so many hours on a case that the fee cap causes the attorney not to be fully compensated for their work – in effect, the attorney works extra hours on a case for free. While dedicated attorneys are often willing to do this, their unpaid efforts can come at the expense of being able to take on other work, thus reducing their overall income.
- Third, 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 a young attorney to transition from being a law school student to becoming an effective advocate. In a relatively short period of time, this new attorney must be ready to represent clients facing some of the most dire consequences available in our society, from loss of children to substantial periods of imprisonment.
- Fourth, by enabling private attorneys to take the time necessary from their practice to receive quality training opportunities that sometimes require traveling to specialized

continuing legal education programs, for example, specialized OVI or juvenile law training.

Expanding the Applicant Pool

As the Chief Public Defender, particularly in a large office, one of my most important responsibilities is to hire good people. 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 are not going to get rich in this job.

The problem is that, for some law graduates who 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 simply be ameliorated by driving a less expensive car, living in a cheaper apartment or cutting back on other personal expenses. 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 even 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 is why they had to incur so much student loan debt in the first place. As a result, public defender's offices are sometimes off-limits to attorneys who could provide expanded diversity and, in some cases, provide many clients with the confidence that comes from having an attorney who understands the client's personal circumstances, who has endured the client's hardships.

These same concerns apply to those attorneys who enter private practice but desire to devote a significant portion of their time to representing indigent criminal defendants. Many attorneys who are solo practitioners or young associates in small firms (where their compensation may consist of a very modest salary combined with retention of a sizeable portion of the income they bring to the firm) cannot devote one-quarter or more of their professional time to taking appointed criminal cases while foregoing more lucrative opportunities when that same student-loan nut needs to be cracked each month.

Retention

Even those attorneys who find a way to overcome the financial hurdles attendant to beginning their careers as assistant public defenders or private-practice attorneys spending considerable time handling court-appointed criminal cases can still find themselves forced to leave a public defender's office or curtail their indigent-defense practice because of rising costs after the first year or two in practice. For some, the exodus from law school coincides with, or precipitates, a desire to start a family. Now the young defense attorney confronts added household costs, including the costs of child care. Once again, the student loan bill is a fixed cost that is oblivious to the financial strains of a growing family. And so young defense attorneys may have to look elsewhere.

What is particularly frustrating for a public defender's office is that these defenders are leaving after considerable time and expense has been devoted to getting them up to speed in a hurry in their development as criminal litigators. In an assistant public defender's first year, considerable time needs to be devoted to developing basic litigation skills. While much is accomplished via learning by doing, supervisors and more seasoned attorneys spend considerable time, either formally or informally, in mentoring. In addition, many young assistant public

defenders throughout the state participate at their office's expense in intensive trial or appellate training seminars. This type of training is necessary if a young assistant public defender is going to go to court and represent parents in permanent custody cases, or persons charged with felonies, either in juvenile court, the court of common pleas or the appellate courts. When those same attorneys are forced to make career changes because of the financial constraints brought about by an inability to pay their student loan debt, the fruits of the first two or three years of mentoring and training are often bestowed upon a larger private law firm which, frankly, does not need State-subsidized training for their laterally hired former public defender.

And this need for quality training (which is not always available at the local bar association's programs and may require blocking off multiple days and paying for an out-of-town seminar) is just as acute for private-practice attorneys handling indigent-defense cases.

The Cuyahoga County Experience

Quality and experience matter. As a result of our ability to attract and retain quality personnel, Cuyahoga County public defenders have been fortunate enough to be on the cutting edge of the criminal law in our State. Our appellate attorneys appear frequently in the Ohio Supreme Court. Our trial attorneys litigate aggressively and effectively, including in capital cases and other complex matters. These are the advantages of being able to attract and keep good people.

In the end, this is not a bill that simply throws money at a problem. This is a reasoned and targeted remedy to a serious issue.

Conclusion

On behalf of the dedicated attorneys of Cuyahoga County Public Defender's Office, on behalf of our brother and sister defenders throughout the State in both the public and private

sectors, and most importantly, on behalf of the thousands who depend upon our legal representation because they have nowhere else to turn, I ask that you pass HB 150. For when this State ensures justice for the poorest among us, we promote the Constitutional vision of a system where there is justice for all.