



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony Regarding Substitute HB33

Chair Edwards, Vice Chair LaRe, Ranking Member Sweeney, and members of the House Finance Committee, I am Tim Young, the Ohio Public Defender. Thank you for the opportunity to testify regarding Substitute HB33.

Substitute HB33 made several substantive changes that would impact the statewide reimbursement rate for indigent defense services and the provision of indigent defense services. OPD is requesting that the amendment giving the General Assembly the authority to cap the counties reimbursement be removed.

Indigent Defense Reimbursement Rate Caps

Substitute HB33 added language in R.C. 120.34 that allows the General Assembly to set caps on the hourly rates for indigent defense services that would be eligible for reimbursement by the State. Section 371.10 of Substitute HB33 then set that cap at \$75 per hour during the FY 2024 - FY 2025 biennium.

The Office of the Ohio Public Defender (OPD) is very concerned that capping eligibility for reimbursement at \$75 per hour will exacerbate the exodus of available counsel for appointment to criminal cases, most dramatically in rural areas. Good defense attorneys can reduce societal costs and improve public safety. However, good attorneys continue to leave the indigent defense practice because appointed counsel rates are so low. Five counties already have appointed counsel rates that exceed \$75 per hour (Athens, Defiance, Henry, Paulding, Williams¹) – not to mention counties that may find it necessary to have appointed counsel rates in excess of \$75 per hour over the next two years. Also, of significant importance, R.C. 120.33(D) gives authority to the Capital Case Attorney Fee Council regarding the rates paid to counsel in capital cases. The Council has set the current hourly rate paid to counsel in capital cases at \$125 per hour (the same rate that has been in place since 2016), and announced this week that the rate will increase to \$140 per hour beginning July 1, 2023. A cap of reimbursing counties for \$75 per hour would have a major impact on capital cases, as counties would only be able to have a portion of those fees eligible for reimbursement.

¹ <https://opd.ohio.gov/county-resources/county-rate-cap-maps>

In addition, a byproduct of the proposed rate cap would be to disadvantage counties that rely on an appointed counsel system solely rather than those that also utilize a county public defender office. In a system that is otherwise designed to provide a pro rata share of reimbursement and equitable State support to counties regardless of the manner of indigent defense services chosen by the county, a cap on appointed counsel rates stand to disadvantage some counties more than others.

The OPD understands the intent of the cap was to provide some fiscal control and predictability in the level of county indigent defense reimbursement budgeting. The OPD respectfully submits this amendment will not achieve this goal, and as outlined above will have several unintended and negative consequences.

The OPD appreciates the need for predictability in indigent defense reimbursement budgeting. Unfortunately, the structure of Ohio's indigent defense system does not provide OPD with the authority to control county spending or the ability to forecast the exact costs of county reimbursement. There are two primary reasons for the unpredictability. First, the respective 88 counties are independently charged with making decisions regarding all indigent defense costs (which are subject to the unique needs of each county – including fluctuations in caseloads, costs of various cases, etc.). Counties are not required to notify the OPD of their estimated indigent defense budgets in advance; rather, reimbursement requests are sent to the OPD months after the expenditures are made. Second, Ohio's indigent defense system has long been underfunded and in need of repair, so counties are finally responding by making necessary and long overdue improvements and changes to their local systems.

Ohio originally contemplated an indigent defense system wherein the State would reimburse counties for up to 50% of their indigent defense costs, with counties exercising local control over their delivery model and budget (e.g., budget for a public defender office, appointed counsel rates, and other associated system costs). Historically, the State fell well below providing 50% reimbursement. From FY1999 – FY2019, there were



only 10 months where the State reimbursed at 50%, and often reimbursement fell well below that level – with the average reimbursement rate across those 20 years equaling 37%.²

Beginning with FY20, the Administration and the General Assembly made a significant investment in Ohio’s indigent defense system, resulting in an average reimbursement rate of 75% in FY20, 75% in FY21, and 100% in FY22. FY23 reimbursement requests are projected to result in an approximately 80% average reimbursement rate.

The structural lack of connection between the respective counties which are responsible for all spending decisions (regarding delivery models and importantly where/when to fix a system that was underfunded for 20 years) and the State providing reimbursement of those expenses, has resulted in a system that is unpredictable. Recent county increases in spending have resulted in a system where the costs are outside of any historical model thereby impacting predictability of the cost of the system as a whole.

It is also important to note that this amendment to R.C. 120.34, “(D) No reimbursement shall be made under this section for costs of indigent defense to the extent that those costs exceed the hourly rate, if any, established by the general assembly.” conflicts with existing law in R.C. 120.04(B)(7)-(9) that gives authority to the State Public Defender to establish the standards and guidelines on reimbursement and the maximum amount that the state will reimburse to the counties for each specific type of legal service performed by a county appointed counsel system.

Currently, the Ohio State Bar Association (OSBA) has a task force examining issues including the lack of lawyers and fiscal controls and HB150 created a legislative task force that will also examine the present funding and structure of indigent defense. Recommendations from both bodies will address the challenges present in Ohio’s current indigent defense system and propose solutions. These solutions will be focused on

² https://opd.ohio.gov/static/County%20Resources/Reimbursement/Reimbursement-Percent-History_02-2023.pdf



finding a balance between local control of indigent defense spending and funding from the State that works cooperatively and fairly for all 88 counties.

The OPD is hopeful that recommendations from the OSBA and HB150 taskforces will help Ohio in evaluating the future structure and funding of indigent defense, which will better achieve predictability in indigent defense reimbursement budgeting than the amendment to R.C. 120.34 to cap rates at \$75 per hour. Because of the negative impact to available counsel, client outcomes, capital cases, and equitable provision of State support, the OPD recommends removing this amendment in Substitute HB33.

