



# Office of the Ohio Public Defender

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*Timothy Young, State Public Defender*

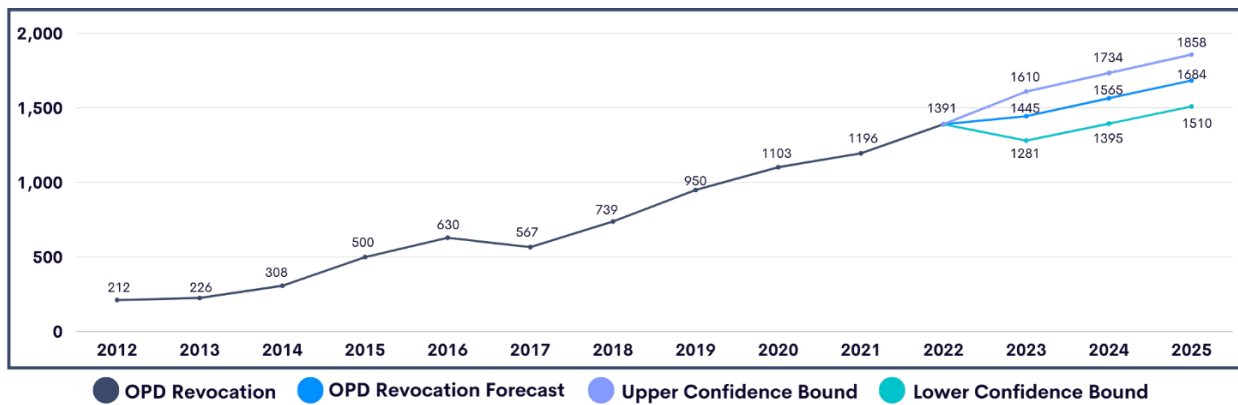
## **Testimony Regarding the Budget of the Ohio Public Defender Commission**

Chair Miller, Ranking Member Miller, and members of the House Finance Subcommittee on Public Safety. 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 Office of the Ohio Public Defender (OPD), overseen by the Ohio Public Defender Commission, is the state agency responsible for providing legal representation in courts throughout Ohio to people accused or convicted of a crime who cannot afford to hire an attorney, as is constitutionally mandated. The OPD provides representation on appeals, post-conviction actions in death penalty, criminal, and juvenile delinquency cases, at trial in certain instances, and at parole revocation hearings for the 44,000 individuals in Ohio's prisons. The OPD is also responsible for overseeing the reimbursement funding to all 88 counties for the cost of running their local indigent defense systems, and it administers standards established by its Commission. Our mission is Fighting. Advocating. Helping. And our vision is "A Fair Justice System." This is a shared value among all of us – a fair justice system. One that promotes safety but not at the unnecessary incarceration of anyone.

The OPD supports and deeply appreciates Governor DeWine's proposed budget for indigent defense. There are two areas of the budget on which we want to focus. The first is a constitutional mandate to provide representation in certain revocation hearings. Regarding this area, the OPD has a request to allocate an additional \$775k in FY2024 and \$900k in FY2025 to OPD's operating budget to allow OPD to meet the State's constitutional obligation and to provide services pursuant to a statutory language change.

To provide context on the statutory change and OPD's request for funding, OPD has an existing mandatory statutory duty to provide counsel at DRC revocation hearings. In fact, OPD is the only source of counsel for those hearings. The volume of DRC revocation hearings where OPD must provide counsel has exponentially increased in the past decade, from 212 hearings in 2012 to 1,391 hearings in 2022 (see below chart).



DRC revocation hearings are conducted by DRC’s Adult Parole Authority and concern individuals alleged to have violated the terms of their supervision – either parole or post-release control. The United States Supreme Court has held that our Constitution requires counsel be provided in some, but not all, revocation hearings. DRC reviews individuals who are alleged to have violated their parole or post-release control and determines whether their case and circumstances warrant a constitutional right to counsel at their revocation hearing. In 2021, the OPD provided representation to 1,196 individuals. In 2022, the number of individuals entitled to representation had grown to 1,391.

The State is constitutionally mandated to provide representation at DRC revocation hearings, and the OPD is the designated and appropriate agency to meet this duty. The significant increase in these cases has impacted OPD work in other prison legal services – full board hearings (which are proceedings where individuals are considered for release from DRC) before the Parole Board as well as in jail time credit work (where the OPD assists with ensuring that a person who is held in jail pending trial will be given one day of credit toward any resulting prison sentence). With the current volume of work and OPD’s staffing levels, it is impossible for OPD to cover all revocation hearings and provide counsel in these other matters. The statutory amendment requires OPD to provide representation at parole full board hearings and parole eligibility hearings, and in revocation hearings as assigned by DRC. The amended language will also allow OPD to utilize contract attorneys to cover the exponential increase in revocation hearings. The additional funding the OPD is requesting is to hire additional staff



members to meet these duties and to coordinate with and assign contract attorneys throughout the state to these types of cases.

In order to provide the counsel necessary for these duties, OPD will need to hire five additional attorneys and two administrative support professionals. With these additional staff, OPD estimates being able to provide an array of necessary prison legal services – DRC revocation hearings, full board and parole eligibility hearings in front of the Parole Board, jail time credit matters, maintain office hours and provide legal orientation at DRC reception centers. We anticipate providing representation in approximately 90% of parole full board hearings and parole eligibility hearings, and 70% of revocation hearings (depending on future case numbers)—with the remaining cases assigned to contract counsel.

The second area of focus is the reimbursement budget to the counties. The OPD oversees three 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, prison legal services, appeals and post-conviction representation for adults and youth convicted or adjudicated of a crime, and conditions of confinement work in the Ohio Department of Youth Services;
2. The reimbursement budget funds reimbursement to all 88 counties for the county-level costs of indigent defense – including all methods a county may use to provide those services (appointed counsel, county public defender office, contract with a non-profit, or contract with the state public defender).
3. The third budget solely serves as a pass through to the Ohio Access to Justice Foundation, formerly known as Legal Aid, which is a non-profit organization that provides funding to civil legal aid and other justice initiatives for low-income Ohioans in civil matters – so their budget does not impact defense representation.

The OPD is grateful to Governor DeWine for his continuing investment in county-level indigent defense by allocating over \$385 million for county reimbursement over the next two fiscal years. It is



important to note that counties continue to increase appointed counsel rates and county public defender operational expenditures and do so without limitation during the ongoing biennial budget cycle. While these improvements are vitally needed and supported by the OPD as necessary expenditures, the OPD's review of reimbursement submissions shows that indigent defense system costs have yet to stabilize from decades of underfunding.

As the State has dramatically increased the funding for reimbursement to the counties for indigent defense the system is out of balance. That is, the system originally contemplated that counties would participate in approximately 50% of the cost and the counties exercised local control over the delivery model, the budget for a public defender office, the appointed counsel rates, and other associated system costs. Today, the State is paying all or almost all of the cost but the cost and expense decisions are still being made locally. And there are no present fiscal controls that would allow the State to limit how much or how fast the reimbursement dollars are used.

Today, 88 counties make budgeting decisions throughout the biennium and there is no requirement for counties to notify the OPD in advance of their respective planned spending. The OPD is required to provide pro rata reimbursement to all counties even when spending decisions are imbalanced and uneven among the counties.

The lack of connection between who pays and who chooses what to spend has resulted in a system that is unpredictable. OPD cannot presently tell you what 100% costs will be in the future with any degree of present reliability. Those costs will be different tomorrow, unpredictably different. We can provide our best projection of system costs based on prior reimbursement submission trends, inflation, and estimates of what counties may elect to spend. The problem is that costs have increased outside of those projections every month since we submitted the budget. And there is no historic model that can project these costs as historic spending occurred when there were fundamentally different incentives that no longer apply.

Below, the OPD has provided two charts. The first chart summarizes the amount of funding appropriated for county-level indigent defense from FY20 – FY23, and the second chart estimates the reimbursement



rate based on potential submissions by the 88 counties. To be clear, the OPD is not requesting additional reimbursement funding because we cannot tell you what it should be.

### COUNTY REIMBURSEMENT RATE

| REIMBURSEMENT OVERVIEW            | FY20          | FY21          | FY22          | FY23<br><small>(6 mo. data)</small> |
|-----------------------------------|---------------|---------------|---------------|-------------------------------------|
| Annual Approved Submissions       | \$150,475,274 | \$142,745,863 | \$162,031,862 | \$90,879,817                        |
| Average Monthly Submissions       | \$12.5mil     | \$11.9mil     | \$13.5mil     | \$15.1mil                           |
| Annual Paid Submissions           | \$112,821,981 | \$107,345,830 | \$162,031,862 | \$81,791,874                        |
| Annual Average Reimbursement Rate | 75%           | 75%           | 100%          |                                     |

| REIMBURSEMENT BUDGET             | FY24                               | FY25                                 |
|----------------------------------|------------------------------------|--------------------------------------|
| Amount Appropriated              | \$190,000,000                      | \$195,815,900                        |
| Monthly Submission/Rate Scenario | \$15mil = 100%<br>(\$190mil total) | \$15.5mil = 100%<br>(\$195mil total) |
| Monthly Submission/Rate Scenario | \$16mil = 94%<br>(\$201mil total)  | \$16.5mil = 94%<br>(\$207mil total)  |
| Monthly Submission/Rate Scenario | \$17mil = 89%<br>(\$213mil total)  | \$17.5mil = 89%<br>(\$219mil total)  |
| Monthly Submission/Rate Scenario | \$18mil = 84%<br>(\$225mil total)  | \$18.5mil = 84%<br>(\$231mil total)  |

Note: Each of the above "total amount scenarios" include \$9.1mil in FY24 and \$9.8mil in FY25 for the cost of OPD providing indigent defense services in the 10 counties that elect to contract with OPD. Those costs are subject to the reimbursement rate, the same as all other county indigent defense services.

Without fiscal controls of some sort in the short term and a fundamental structural change in the long term, the ability to accurately project the costs of indigent defense being expended by the 88 counties is not presently possible with any degree of reliability. Finally, do not misunderstand, the expenditures being made by the counties are not wasteful or unwarranted just much faster than ever anticipated. These improvements are deeply needed to bring some balance to our adversarial system. But the funding is such that counties are making decisions with a rapidity of pace that outpaces any predictive capacity. As long as there is not some sort of change to rebalance the system, the idea of full (100%) reimbursement will be impossible as the number will be a constantly changing and increasing target.



Thank you for supporting indigent defense across the State of Ohio, and for the opportunity to testify before your subcommittee. I am happy to answer questions at this time.



# ADDENDUM

## Proposed Amendments

### *Funding Amendment*

SECTION 371. 10. PUB OHIO PUBLIC DEFENDER COMMISSION

General Revenue Fund

GRF 019401 State Legal Defense Fund    \$   ~~9,766,300~~ 10,541,300    \$   ~~11,387,300~~ 12,287,300

