



Office of the Ohio Public Defender

Timothy Young, State Public Defender

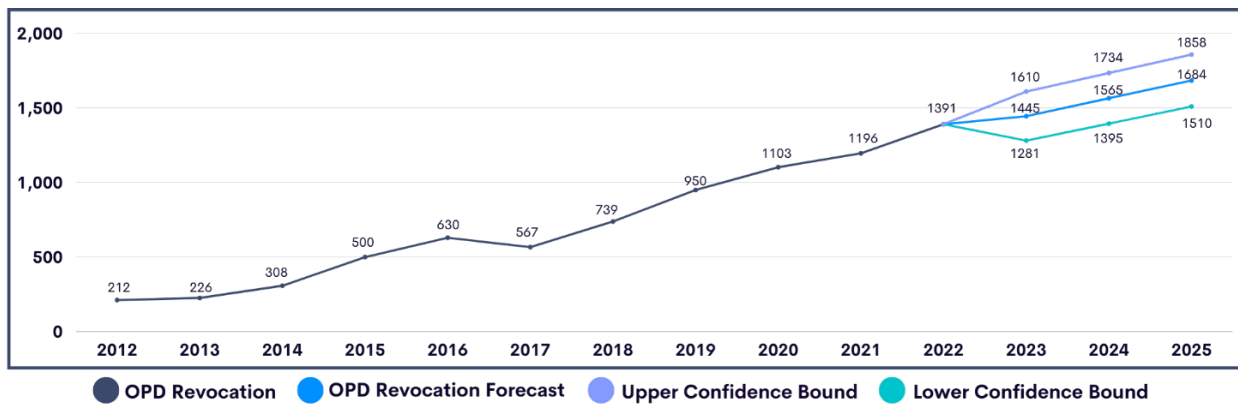
Testimony Regarding the Budget of the Ohio Public Defender Commission

Chair Dolan, Vice Chair Cirino, Ranking Member Sykes, and members of the Senate Finance Committee, I am Tim Young the Ohio Public Defender. Thank you for the opportunity to testify regarding the budget of the Ohio Public Defender (OPD).

The OPD is requesting the Senate reinstate two provisions that were provided in both the Executive Budget and by the House Budget but removed in the Senate Substitute Budget Bill. The first provision is statutory language that allows the OPD to meet the constitutional right to counsel by contracting with attorneys to provide representation in Department of Rehabilitation and Correction's (DRC) revocation hearings, and the second provision is the level of funding for the OPD operational budget, to meet this same constitutional duty.

Statutory Language

DRC and OPD both supported the statutory language change that was included in the Executive and House budgets. This provision was included to meet the Ohio's constitutional duty to provide counsel in revocation hearings. To provide context on the statutory change, OPD has an existing mandatory statutory duty to provide counsel at DRC revocation hearings. OPD is presently the sole source of counsel to meet the constitutional right to counsel at these 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.

As stated, 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. With the current volume of work and OPD’s staffing levels, it is impossible for OPD to cover all revocation hearings and provide counsel. The agency is in dire need to contract with attorneys to provide representation in some of these cases. We respectfully ask the Senate to reinstate the statutory language for the OPD to be able to contract with counsel in DRC revocation hearings.

It is important to note that revocation hearings are separate and unique from other prison hearings – the constitutional right to counsel. This should not be conflated with the parole release hearings. The Executive Budget and the House Budget Bill also included statutory language regarding DRC parole hearings, that permitted OPD to provide counsel and contract for counsel in those hearings. Representation in DRC parole hearings is separate and apart from DRC revocation hearings. Representation at parole hearings, while requested by DRC and is of assistance to the operations of DRC, is not constitutionally required. As such the OPD’s request to the Senate is limited to



reinstating the language regarding revocation hearings. Attachment A to this testimony provides details on the requested change.

Funding for Operating Budget

OPD's second request is for the Senate to reinstate the level of funding that was included in both the Executive Budget and House Budget for OPD's operating budget. More specifically, the Senate Substitute Bill reduced OPD's operating budget by \$776k in FY24 and \$887k in FY25. As evidenced above, OPD needs attorneys to provide constitutionally mandated services and is struggling to meet our present statutory duties which would only be compounded by a reduction in the operating budget. If it is necessary to make this cost neutral in the Senate budget for indigent defense, the Senate may transfer less than .5% (\$826k and \$937k) from the County Reimbursement line, which was funded with \$166mil in FY24 and \$171mil in FY25, to OPD's operating budget line. This transfer would allow OPD to provide constitutionally required services for individuals across the State. Without those funds, the OPD will not be able to meet our statutory duties. We appreciate the Senate's support of OPD's operating budget on balance with the support of county indigent defense.

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



Attachment A

Amend 120.06 (A) (5) at line 5002 to read as follows -

~~(5) The (5) (a) Except as provided in division (A) (5) (b) of this section, the state public defender, when designated by the court or requested by a county public defender, joint county public defender, or the director of rehabilitation and correction, shall provide legal representation in parole and probation revocation matters or matters relating to the revocation of community control or post-release control under a community control sanction or post-release control sanction, unless the state public defender finds that the alleged parole or probation violator or alleged violator of a community control sanction or post-release control sanction has the financial capacity to retain the alleged violator's own counsel.~~

(b) If the state public defender decides to provide the legal representation described in division (A) (5) (a) of this section, but determines that it does not have the capacity to provide the legal representation described in division (A) (5) (a) of this section, the state public defender may contract with private counsel to provide the legal representation described in division (A) (5) (a) of this section.

Add new 120.06 (D) (4) at line 5061 to read as follows -

(4) When the state public defender decides to provide the legal representation described in division (A) (5) (a) of this section, but does not have the capacity to provide the representation described in division (A) (5) (a) of this section and the state public defender contracts with private counsel to provide the legal representation described in division (A) (5) (a) of this section, the state public defender shall directly pay private counsel's legal fees and expenses from the indigent defense support fund pursuant to section 120.08 of the Revised Code.

(5)



Add new 120.08 (B) (3) at line 5303 to read as follows -

(3) Directly paying private counsel's legal fees and expenses pursuant to division (D) (4) of section 120.06 of the Revised Code.



Attachment B

Proposed Amendment

Funding Amendment

SECTION 371. 10. PUB OHIO PUBLIC DEFENDER COMMISSION

General Revenue Fund

GRF 019401 State Legal Defense Fund \$ ~~9,050,000~~ 9,816,000 \$ ~~10,550,000~~ 11,487,300

I think the appropriation amounts in GRF 019401 should be \$9,816,000 and \$11,437,000 if we want to get back to the Executive/House levels of GRF funding.

