



Office of the Ohio Public Defender

Elizabeth R. Miller, *State Public Defender*

Substitute House Bill 96 Testimony

Elizabeth R. Miller, State Public Defender

Senate Finance Committee

April 9, 2025

Chair Cirino, Vice Chair Chavez, Ranking Member Hicks-Hudson, and members of the Senate Finance Committee:

I am State Public Defender Elizabeth Miller¹ and on behalf of the Office of the Ohio Public Defender (OPD), thank you for the opportunity to testify regarding Substitute House Bill 96 (Sub HB 96).

AGENCY OVERVIEW

As the State Public Defender, I proudly serve as the Director of the OPD. The OPD is Ohio's State agency that bears the great responsibility of ensuring that the constitutional rights of indigent Ohioans who become involved with the criminal and youth justice systems are protected. The OPD employs approximately 200 employees in five different offices. Our work includes, but is not limited to, providing direct representation on appeals and post-conviction actions in death penalty, criminal, and youth delinquency cases and representation in the Ohio Supreme Court; at trial when requested by local courts and in counties that contract with OPD for trial services; and OPD serves as the sole source of counsel at parole revocation hearings for individuals subject to supervision by the Ohio Department of Rehabilitation and Correction (DRC).

The OPD also provides conditions of confinement assistance to youth incarcerated in the Ohio Department of Youth Services, and investigation and mitigation services to local public defenders and court-appointed counsel across Ohio. The OPD further provides technical

¹ The Ohio Public Defender Commission is a nine-member body composed of professionals, including attorneys appointed by the Governor and the Supreme Court. The Commission appoints the State Public Defender and has statutory duties under Revised Code Chapter 120 to establish and reinforce standards, rules, procedures, and guidelines regarding numerous aspects of indigent defense in Ohio.



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assistance, research services, and training to counties, public defender offices, and defense counsel who represent people who are indigent. Finally, the OPD is responsible for reimbursing all 88 counties for a portion of the cost of their local indigent defense services – processing approximately 140,000 bills each fiscal year.

I want to express my deep appreciation and support for Governor DeWine’s proposed executive budget for indigent defense. In the last three operating budgets, the DeWine Administration and the General Assembly have supported critical investments in Ohio’s indigent defense system, and we are grateful to see that trend continue with the Governor’s proposed budget for the next biennium. It is important to note that OPD currently has four separate components to our overall budget, and that the House version of Sub HB 96 includes a new fifth component to our budget with the creation of the Northwest Regional Hub (NWRH), as follows:

1. The OPD’s operating budget funds the OPD’s Central Office, which is primarily used to employ staff to provide direct representation to indigent Ohioans across the State, technical support and training to counties, and to help meet our statutory duties prescribed in Revised Code Chapter 120;
2. The multi-county branch office budget provides funding to support operations in the ten counties that contract with the OPD to provide indigent defense services (Adams, Athens, Brown, Fayette, Jackson, Pickaway, Pike, Ross, Trumbull, and Washington). The funding for this program is split between the State and the participating counties at the same rate as the statewide county reimbursement rate;
3. Through its reimbursement budget, the OPD reimburses all 88 counties for their county-level indigent defense costs once counties pay and submit their costs to OPD for reimbursement;
4. The OPD also has a budget line that serves strictly as a pass through to the Ohio Access to Justice Foundation (OAJF). The OAJF is a non-profit that funds civil legal programs and services to address the unmet civil legal needs of low-income Ohioans. Importantly, the OAJF, through its Legal Aids, does not provide indigent defense services, so their budget does not impact defense indigent defense representation;
5. Sub HB 96 creates a pilot program known as the Northwest Regional Hub (NWRH). Under this program, the Allen County Public Defender’s Office will be absorbed into the



operations of the OPD, and indigent defense services will be provided in Allen, Hardin, and Putnam Counties. The operations of the pilot will be fully funded by the State.

SUB HB 96's CURRENT PROVISIONS

The House version of Sub HB 96 contains six key elements that we request the Senate to maintain and support as the bill progresses through the legislative process: (1) OPD's Operating Budget; (2) the Northwest Regional Hub; (3) increased funding to Ohio's 88 counties for reimbursement; (4) a statutory change relating to county budgets; (5) a statutory change relating representation at revocation hearings; and (6) support for an indigent defense performance audit.

1. OPD's Operating Budget

The As Introduced version of HB 96 and Sub HB 96 includes \$40 million for OPD's operating budget over the course of the biennium. The OPD did not request an increase from the House as this budget allows OPD to maintain its current operations and training services. Included in this budget is \$50,000 for each fiscal year specifically earmarked to provide training and/or to help fund scholarships to criminal defense lawyers all around the state who provide indigent criminal defense representation as either a public defender, court appointed counsel, or if, as part of their practice, they provide some criminal pro bono services. To qualify, these attorneys must be facing financial hardship and could not otherwise be able to get skills-based training which is needed to provide constitutionally sound representation. Under R.C. 120.04(B)(13), OPD is required to provide this technical aid and assistance. This is not a broad, State subsidized CLE program for lawyers, but a narrowly focused effort to help low-income criminal defense attorneys, most of whom have been newly admitted to the bar.

Currently, 84% of OPD's operating budget is used for payroll while 15% is committed towards office space, supplies, maintenance, and contracts. Furthermore, OPD requires sustained funding to its central office in order to support the Northwest Regional Hub with its already existing human resources and technical support personnel. The OPD respectfully requests the Senate to maintain the funding currently appropriated in Sub HB 96 so it can maintain its core operations and continue to provide its statutorily obligated training services without interruption.



2. Northwest Regional Hub (NWRH)

We are excited about Governor DeWine's support for the creation of a new indigent defense delivery model in Ohio, termed the NWRH. The NWRH is a unique pilot project focused on providing fully funded indigent defense services in Allen, Hardin, and Putnam counties using a more cost-effective regional hub model. Currently, Allen County operates its own county public defender office, and Hardin and Putnam counties rely exclusively on court appointed counsel. Like many rural counties in Ohio, it is a challenge to find local counsel to take indigent defense cases.

Under the NWRH, the Allen County Public Defender Office will become part of the OPD's operations, and act as a hub for the services provided in Allen, Putnam, and Hardin counties. Under this pilot, at least 20% of cases would be assigned to appointed counsel (as counsel is available and willing to take cases), with the remainder of cases being assigned to a public defender. As the physical hub, Allen County will house and provide support to public defenders designated to serve each of the three counties. By providing shared administrative services, the three counties will avoid the redundant costs of multiple physical offices. To aid the General Assembly in understanding the true cost of Ohio's indigent defense system, the Executive Budget proposes that the NWRH be separately and fully funded under its own line item. The pilot project is also not subject to the reimbursement rate, allowing the costs and operations of the regional hub model to be studied and compared to other service models currently available in Ohio. As a potential model for future regional hubs in other parts of the State, the NWRH can help bring stability, predictability, and accountability to Ohio's indigent defense system.

The NWRH is supported by the OPD, the Ohio State Bar Association, the County Commissioners Association of Ohio, the Ohio Association of Criminal Defense Lawyers, the Ohio Judicial Conference, the Ohio Access to Justice Foundation, and Allen County Commissioner Cory Noonan. We are excited about Governor DeWine's support of the NWRH, and we ask the General Assembly for its support in HB 96.

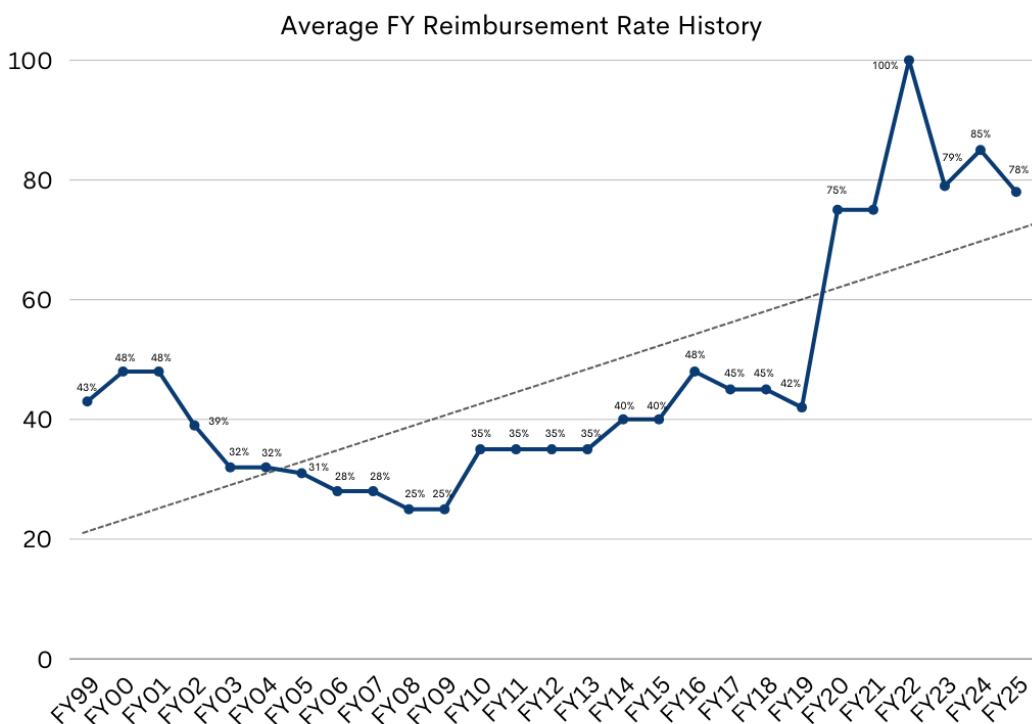
3. Increased Funds for County Reimbursement

A major focus of every operating budget is the amount appropriated to reimburse all 88 counties for their indigent defense costs. The OPD is grateful to Governor DeWine for continuing his historic investment in county-level indigent defense by allocating \$197 million in FY26 and



\$202 million in FY27. Until 2019, counties were reimbursed at less than fifty percent for their county's indigent defense costs as shown below in Figure 1.

Figure 1.



Although reimbursement rates increased in fiscal year 2020, as counties continue to make necessary investments in their respective indigent defense services to ensure constitutional and effective representation is afforded to all Ohioans impacted by the system, reimbursement submissions indicate that indigent defense system costs continue to increase. Figure 2 below summarizes the amount of reimbursement submissions for county indigent defense expenses from FY21 – FY25.



Figure 2.
REIMBURSEMENT SUBMISSIONS FY21-FY25

Reimbursement Overview	FY21	FY22	FY23	FY24	FY25 (8 mo. data)
Average Monthly Submissions	\$11.9 mil	\$13.5 mil	\$16 mil	\$17.7 mil	\$18.4 mil
Annual Approved Submissions	\$142,745,863	\$162,031,862	\$189,846,413	\$210,902,452	\$147,504,000
Annual Average Reimbursement Rate	75%	100%	79%	85%	83%

Sub HB 96 appropriates an additional \$21,750,000 in each fiscal year for reimbursement of county level indigent defense services. Figure 3 below shows an estimate of what reimbursement rates may be, depending on the possible investments of Ohio's 88 counties and the House version of Sub HB 96 for FY26 and FY27. The projections for both years are based upon the assumption that monthly submissions will remain between \$19-21 million dollars. This sustained level of state support will allow counties to continue to support and invest in their indigent defense systems over the course of the next biennium.

Figure 3.
CURRENTLY IN SUB HB 96

Reimbursement Budget	FY26 = \$218 mil	FY27 = \$224 mil
Submission/Rate Scenario	\$240 mil total = 91% (\$19 mil/mo.)	\$253 mil total = 88.6% (\$20 mil/mo.)
Submission/Rate Scenario	\$246 mil total = 88.8% (\$19.5 mil/mo.)	\$259 mil total = 86.5% (\$20.5 mil/mo.)
Submission/Rate Scenario	\$252 mil total = 86.7% (\$20 mil/mo.)	\$265 mil total = 84.5% (\$21 mil/mo.)

Note: Each of the above *total amount scenarios* include \$12mil in FY26 and \$12mil in FY27 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.

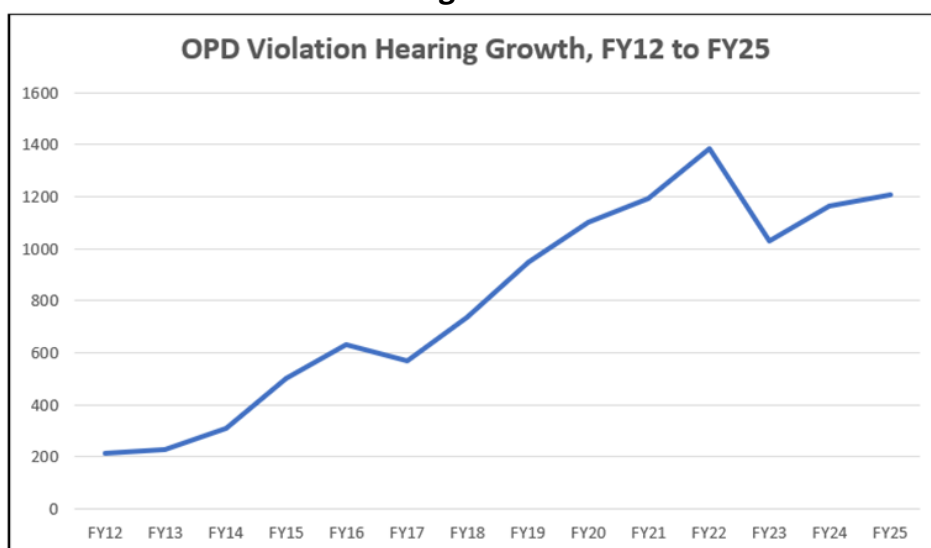
4. County's Projected Indigent Defense Costs

A major challenge under Ohio's current indigent defense structure is the inability to predict the level of indigent defense services counties may need in an upcoming biennium. Ohio's system makes it incredibly difficult for OPD to project costs and to provide the General Assembly with a fully informed estimate of what level of funding may be necessary to achieve a certain rate of reimbursement to the counties. Under Sub HB 96, all 88 counties will be required to submit, biennially, an indigent defense cost projection report to the State Public Defender. These reports will allow the OPD to better project costs of Ohio's indigent defense system and to provide more accurate cost estimates. We fully support this language and request the Senate keep this provision in Sub HB 96.

5. OPD's Ability to Contract with Private Counsel for Revocation Hearings

Sub HB 96 also includes statutory changes to RC 120.06 and RC 120.08 to help the OPD meet its constitutional and statutory duty to provide counsel in DRC post-release control revocation hearings. Under the 5th and 14th Amendments of the United States Constitution, individuals subject to post-release control have a due process right to counsel at a violation hearing under certain circumstances. The OPD is required to provide counsel at these hearings pursuant to R.C. 120.06(A)(5). The statutory change in Sub HB 96 is necessary because the annual number of violation hearings where OPD represents Ohioans in these hearings has increased nearly 600% since FY12 and remains on an upward trajectory, as shown in Figure 4 below.

Figure 4.



It is important to note that this language does not create or expand the right to counsel in these violation hearings. This language also does not result in OPD requesting additional funds, beyond those already appropriated to indigent defense in the reimbursement line. This language merely grants the OPD with the necessary statutory authority to allow it to fulfill its already existing statutory obligation to provide the constitutional right to counsel, either directly by the OPD or private legal counsel. As representation demands increase, the OPD can contract with more attorneys. If demand decreases, the OPD can opt to contract with less private attorneys. The contract language gives OPD flexibility in responding to the fluctuating volume of violation hearings while maintaining a lean and efficient staffing level for this type of constitutional representation. DRC supports this language and the OPAA does not oppose it.

6. Indigent Defense System Performance Audit

Sub HB 96 also contains language and funding to initiate a statewide indigent defense performance audit to be conducted by the Auditor of State's Office. We respectfully ask for the Senate's support of this audit.

REQUESTED CHANGES TO SUB HB 96

We are also asking for one key change to the House version of Sub HB 96 that relates to OPD's reimbursements to counties for their indigent defense costs.

Remove the Hourly Rate Cap for Reimbursement

In Ohio, courts are struggling to find attorneys to provide indigent defense representation – predominantly in rural jurisdictions. The attorney shortage impacts courts' ability to find and assign attorneys to represent indigent defendants throughout court proceedings, which causes unnecessary delays and an increase in costs to the system. The OPD requests the Senate to remove the \$75 cap and the \$140 cap for capital cases on court appointed counsel's reimbursable hourly rate from the House version of Sub HB 96. Having failed to provide the significant cost savings originally hoped for by the last General Assembly, the caps impact the courts' ability to find and retain attorneys willing to work in this underserved field, resulting in a disproportionate impact on the smaller, rural counties.



CONCLUSION

In closing, the OPD remains grateful to Governor DeWine and the General Assembly for their continued investment in Ohio's indigent defense system. We respectfully request the Senate's support for the current statutory changes and funding for reimbursement provided for in Sub HB 96. We also ask for this body's support for the change highlighted above that will directly impact court appointed defense counsel in Ohio's most vulnerable communities. Thank you again for the opportunity to testify and for your consideration of our budget requests. I am happy to answer any questions you may have at this time.



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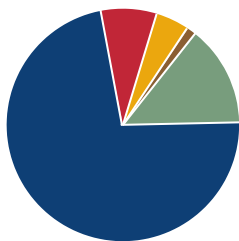
ABOUT US

The Office of the Ohio Public Defender (OPD) represents people at trial, on appeal, and in post-conviction actions in death penalty, criminal, and youth defense cases. The OPD also provides assistance to the more than 45,000 people in Ohio's prisons and kids in DYS; and at revocation hearings for people on post-release supervision. Our 200 people strong agency also provides investigation and mitigation support to defense teams; technical assistance, research services, and educational programs to indigent defense practitioners. OPD also reimburses counties for a portion of their costs of running local indigent defense systems.

COMPONENTS OF OPD'S BUDGET UNDER HB 96

Operating Budget (7.9%)

This budget supports the day-to-day operations of the OPD's Central Office and is primarily used to employ staff to help meet our constitutional and statutory duties as prescribed in R.C. 120—among which is oversight and administration of reimbursement to Ohio's 88 counties.



Multi-County Branch Office Budget (4.7%)

This budget provides funding to support operations in the ten counties that contract with the OPD to provide indigent defense services.

Reimbursement Budget (72.3%)

This budget is strictly used to reimburse Ohio's 88 counties for their county-level costs for delivering indigent defense services. These funds are not available for the OPD's operational budget.

Ohio Access to Justice Foundation Budget (13.9%)

The OPD also has a budget line that serves as a pass through to the Ohio Access to Justice Foundation (OAJF), a non-profit that funds civil legal programs and services to address the unmet civil legal needs of low-income Ohioans. The OAJF, through its Legal Aids, does not provide indigent defense services, so their budget does not impact indigent defense representation.

NEW Northwest Regional Hub Budget (1.3%)

See back for more information.

OPD'S BUDGET PRIORITIES



OPD's Operating Budget

We request your support to maintain our operating budget appropriations as currently provided in Sub HB 96.



Northwest Regional Hub

We request your support for the creation of the Northwest Regional Hub, which is currently included in Sub HB 96. See back for more information.



County's Projected Indigent Defense Costs

We request your support for language currently in Sub HB 96 that requires counties to submit, biennially, their projected indigent defense costs to the OPD so that the OPD can provide more accurate cost estimates to the General Assembly.



Increased Funds for Reimbursement

Current appropriations for reimbursement in Sub HB 96 are \$218 million for FY26 and \$224 million for FY27. We request your support to maintain this high level of reimbursement to Ohio's 88 counties for their local indigent defense costs.



Indigent Defense Performance Audit

We request your support of a statewide indigent defense performance audit to be conducted by the Auditor of State's Office, as provided in Sub HB 96.



Removing the Cap on Court Appointed Counsels' Rates

We request your support for an amendment to remove the \$75 cap and the \$140 cap for capital cases on court appointed counsels' reimbursable hourly rate from Sub HB 96.

THE NORTHWEST REGIONAL HUB

WHAT IS IT?

The Northwest Regional Hub (NWRH) is an innovative pilot project currently included in HB 96. It creates a new regional model for indigent defense services, serving Allen, Hardin, and Putnam counties through state public defenders, shared staff, and appointed counsel in the region.

Currently, Allen County operates its own county public defender office, and Hardin and Putnam counties rely exclusively on court-appointed counsel. Under the proposal, the Allen County Public Defender's Office would become part of the OPD's operations and serve as the physical hub for the three counties, of which 20-60 percent of cases would be assigned to appointed counsel (as available). By providing shared administrative services, the three counties will avoid the redundant costs of multiple physical offices and enjoy shared support services.

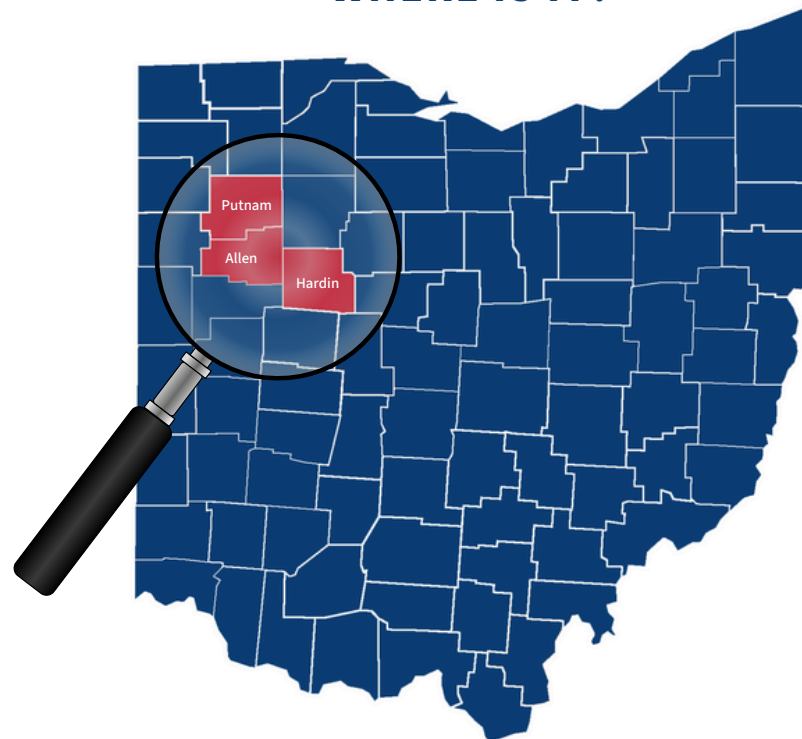
The NWRH will be separately and fully funded under its own budget line item to ensure the project is not subject to the all-county reimbursement rate, allowing the costs of the regional hub model to be studied under real world conditions.

As a potential model for future regional hubs in other parts of Ohio, the NWRH is a reasonable and measured next step that will help ensure Ohio provides quality defense services in an efficient and cost-effective manner.

KEY HIGHLIGHTS

- Streamlines and consolidates operations while improving indigent defense services in the currently underserved areas of Hardin and Putnam Counties.
- Preserves judicial satisfaction with current services in Allen County.
- Offers increased accountability and transparency of state spending in the three counties.
- Creates a predictable funding model for indigent defense services.
- Protects workload for local appointed counsel in rural areas.
- Preserves local judicial control of appointed counsel.

WHERE IS IT?



ENDORSED BY:



**Office of the Ohio
Public Defender**
Advocating. Fighting. Helping.



Cory Noonan
Allen County Commissioner



Office of the Ohio
Public Defender

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Ohio's Indigent Defense Reimbursement System

OVERVIEW

In Ohio, each local county commission determines what method(s) of indigent defense representation are to be provided in their county. The map to the right reflects the methods of indigent defense representation currently utilized in each county. Additional information on funding, number of cases, and other indigent defense expenses for each county can be found in the Appointed Counsel and Public Defender Cost and Expense Report*, which is posted on the Ohio Public Defender (OPD) website.

Each county is responsible for providing and paying for the indigent defense services provided in their county. After making payment, counties submit qualifying costs to the OPD for reimbursement. Once the bills from all 88 counties have been submitted to OPD (approximately three months later), a comparison is made between the amount submitted and the amount available in the reimbursement budget. The result of that comparison determines the reimbursement rate provided to each county, pro rata.

*To access this report manually, type the following link into your browser:
<https://opd.ohio.gov/law-library/reports/FY24-AC-PD-CE-Report>

MAP OF COUNTY SERVICES

- County Public Defender & Court Appointed Counsel
- Court Appointed Counsel
- Contract with Non-Profit & Court Appointed Counsel
- Contract with State Public Defender & Court Appointed Counsel
- Contract with State Public Defender, Non-Profit & Court Appointed Counsel



REIMBURSEMENT HISTORY & REQUEST FOR HOUSE BILL 96

REIMBURSEMENT SUBMISSIONS FY21-FY25

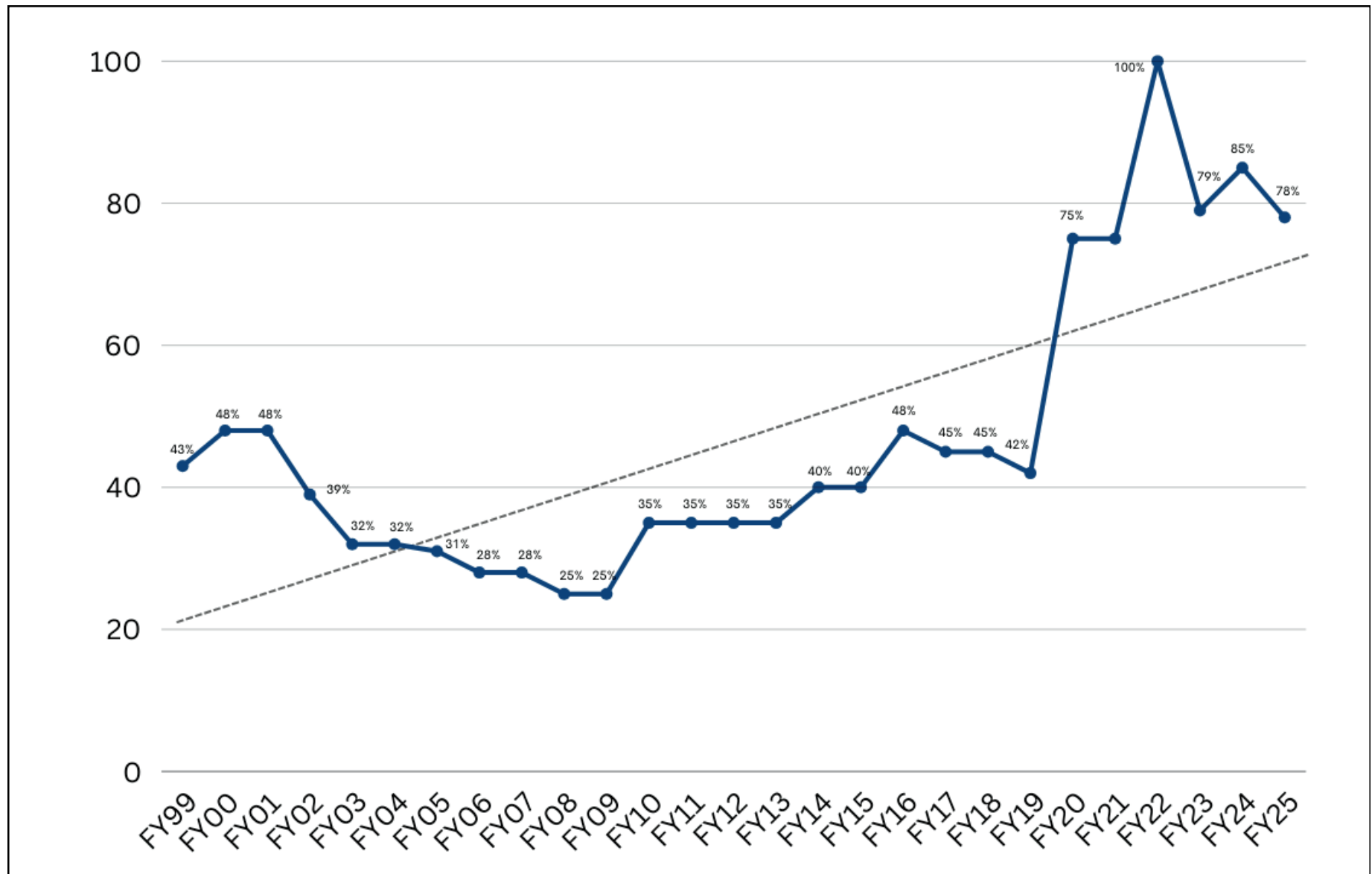
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AVERAGE FISCAL YEAR REIMBURSEMENT RATE HISTORY



FOR MORE INFORMATION



OPD's Annual
Reports on
Reimbursement



Interactive Ohio
County Map



www.opd.ohio.gov



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