



Ohio Prosecuting Attorneys Association

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House Bill 150
Interested Party Testimony
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Chairman LaRe, Vice-Chair Swearingen, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to provide interested party testimony on House Bill 150 to create a public defender loan forgiveness program and to establish an indigent defense task force.

Our Association has and continues to support efforts to improve the quality of indigent defense in Ohio. We have and do support efforts to fully fund indigent defense reimbursement and have and to support efforts to increase the reimbursement rate for indigent defense attorneys. Quality indigent defense makes the criminal justice system function more fairly and more efficiently, makes prosecutors' jobs easier, and helps to ensure that defendants are accorded justice along with the victim and the state. That said, we respectfully request that the State provide the same opportunity to obtain loan forgiveness to assistant prosecutors.

The following is from the Office of the Public Defender's proponent testimony on this bill:

According to data collected by the U.S. News and World Report, the average cost of tuition at a public in-state law school is \$28,264 per year. For private law schools, the average cost of a year of law school is almost \$50,000.2 It is important to keep in mind that these astonishing numbers only include tuition, they do not include the additional money students need to pay for housing, food, books, and other expenses. It goes without saying that most people do not have the money to pay these huge expenses out of pocket. Law students are forced to utilize student loans. On average, law students leave school with a debt of \$145,500 - 77% higher than it was in 2000. However, it is not unusual to have law school debt twice that number.

While the cost of law school tuition continues to increase, the same cannot be said for public defender wages. In 2014, the average starting wage for prosecutors and public defenders in Ohio was \$48,025, which is below the average starting wage nationally for public defenders.

Other similar loan forgiveness programs like the federal John R. Justice loan forgiveness program are available to both public defenders and prosecutors. Other State of Ohio sponsored loan forgiveness programs for physicians (R.C. 3702.75), dentists (R.C. 3702.85), and dental hygienists (R.C. 3702.96) apply broadly to anyone in the profession who agrees to serve where there is a shortage. The Ohio State Bar Association's 2015 Access to Justice Summit Final Report recommended the creation of a loan forgiveness program for legal services in underserved communities with a particular focus on pro bono service. There is a need for a loan forgiveness program for legal services. It should not, however, single out one half of one segment of the profession for loan forgiveness. Young lawyers who want to be prosecutors, or work in any public service job for that matter, come out of law school with just as much debt as those who wish to be public defenders, are often underpaid, and face the same pressures to move to different geographic regions or different legal sectors that public defenders do. And it is at least as important to attract and retain good prosecutors as it is to attract and retain good public defenders. Good prosecutors promote safety for our communities, secure justice for the victims of crime, and work to ensure the accused is accorded justice.

The bill needs clarification in terms of the factors that allow the public defender commission to designate a county as a public defender shortage area. Proposed R.C. 120.63 includes the following two factors that would make a county eligible to be designated as a shortage area:

(B) The case load of attorneys employed as public defenders exceeds the maximum standard set by the Ohio public defender commission.

(C) The attorneys employed as public defenders in the county do not have pay parity with the county prosecutor's office.

The Cuyahoga County Public Defender acknowledged during testimony that his assistant public defenders have pay parity with the assistant prosecutors in Cuyahoga County. OAC section 120-1-7 establishes those workload standards for public defenders and sets the maximum caseload for felonies at 150 per attorney per year. It is not clear how many attorneys in their Public Defender's Office would have to exceed this number or how much they would need to exceed it by in order to make Cuyahoga County eligible to be designated as a shortage area. They have almost 100 attorneys in their public defender's office. If two of them exceed the 150 maximum the bill makes them eligible to be designated a public defender shortage area. So even despite having pay parity with the prosecutors office, their attorneys will be eligible for up to \$10,000 of loan forgiveness and could make the equivalent of \$10,000 more than new assistant prosecutors.

The concept of pay parity is even more vague:

- The bill doesn't specify whether the caseload and workload of the prosecutor's office is taken into consideration in determining pay parity. Prosecutors offices have to handle every felony in the county including those where defendants hires private counsel. In many counties they might also have a civil workload as the legal advisor to counties and townships. If attorney A handles 150 cases per year and attorney B handles 200 should attorney A and attorney B be paid an equal amount?
- The bill doesn't specify who in a prosecutor's office a person employed as a public defender should have pay parity with. Is it the elected prosecutor? An assistant prosecutor with 15 years of experience? Or is it parity with someone who has comparable experience?
- The bill doesn't specify how far below parity a person employed as a public defender needs to be in order to qualify for \$10,000 in loan forgiveness per year. The bill establishes eligibility at 35 hours per week as a public defender. If a public defender makes \$1000 less than a full-time assistant prosecutor who works a minimum of 40 hours a week and the public defender gets \$10,000 in loan forgiveness they are now making the equivalent of \$9,000 more per year than the prosecutor for fewer hours of work.
- The bill doesn't specify whether income from private clients is considered when determining the eligibility of someone serving as appointed counsel. If someone makes \$75,000 in income from private clients and also serves as appointed counsel should they get \$10,000 in loan forgiveness too?

At a minimum, the bill needs to clarify that the total compensation of a person employed as a public defender, including any loan forgiveness amount, shall not exceed the compensation received by a prosecutor in the same county with comparable years of practice and experience.

Finally, I request that the OPAA be given an appointment to the Task Force that is created in the bill. The Task Force includes an appointment for the Attorney General but not a seat for a county prosecutor when county prosecutors have much more day-to-day interaction with indigent defendants the indigent defense system. Indigent defense is an issue that impacts the day-to-day work of county prosecutors, of the county government that they represent, and that impacts the administration of justice in Ohio and prosecutors can provide an important perspective to the work of the Task Force.

Thank you for the opportunity to provide interested part testimony. I would be happy to answer any questions.