



# 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 House Bill 110 (Oelslager)**

Chair Dolan, Vice Chair Gavarone, 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 Commission.

The Ohio Public Defender Commission appreciates the investment in indigent defense proposed by Governor DeWine, the Ohio House, and the Senate Substitute HB110. The Public Defender Commission has one primary request: we ask that an additional \$600,000 in FY2022 and \$1 million in FY2023 be allocated to the operating budget of the Office of the Public Defender (OPD). This funding is critical to allow OPD to hire 15 necessary staff members. In candor, this allocation will not allow OPD to hire all the staff that is needed, but it will allow the OPD to meet our basic statutory and constitutional duties and provide oversight and accountability for the \$320 million appropriated to indigent defense reimbursement – which is projected to result in a reimbursement rate that approaches 100%.

The 133<sup>rd</sup> General Assembly attempted to address the chronic underfunding of OPD. In the last biennium budget, through HB166, OPD received funding to hire 12 new staff members. However, the OPD was forced to cut our operating budget and engage in a hiring freeze due to the COVID-19 pandemic, which resulted in the OPD only being able to hire five new employees during the last biennium.

The Sub. HB110 includes over \$320 million to reimbursement for the counties in each fiscal year. Of that, over \$264 million is general revenue funding (GRF). The OPD is grateful to the Ohio Legislature for their investment in county-level indigent defense. This funding is a major milestone that will bring the reimbursement rate closer to 100%, which is a far cry from the 42% reimbursement rate in FY2019.

However, the House did not provide sufficient funding for the operational oversight and distribution of those reimbursement funds. The reimbursement budget funds do not impact, and are not available for the operational budget of OPD – the agency responsible for the administration and distribution of those funds. Before going into more detail regarding the operational funding of OPD it is important to note that OPD oversees four 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, assistance, and administration of the funds to reimburse the 88 counties for their indigent defense costs;
2. The reimbursement budget funds provide reimbursement to all 88 counties for the county-level costs of indigent defense;
3. The operational budget for OPD's branch offices provides funding for the county public defender offices maintained by the OPD in Athens, Ross, Trumbull, and Washington counties as a result of those four counties contracting with the OPD to provide indigent defense services in those respective counties. Contracting with the OPD to provide a county public defender office is one of five statutory methods available to counties to provide for indigent defense;
4. The fourth budget solely serves as a pass through to the Ohio Access to Justice Foundation, formerly known as Legal Aid, which is an agency that serves needy Ohioans on civil matters. OAJF does not provide indigent defense services, so their budget does not impact defense representation.

With those four budgets in mind, the House's increased funding to indigent defense is for the reimbursement budget and does not address the impact this has on OPD's operational budget. Prior to recent attention, OPD's operational budget suffered from severe underfunding for a 15-year cycle that has never been overcome. Despite increasing caseloads, increasing demands, and inflationary costs, funding for OPD's operating budget increased only 7.7% from FY2000 to FY2015. During that same



period, the Consumer Price Index increased 37%. The cost and size of Ohio's criminal justice system consistently grows 2.5 – 3% annually, but funding was not allocated accordingly. The agency has never recovered from this dramatic and chronic underfunding during which two different layoffs occurred.

The OPD cannot continue on this path without some change to undo the 15-year period of being underfunded and understaffed. We are extremely appreciative that OPD was able to hire five employees last biennium. But it is not enough. Despite underfunding and understaffing, the quality of the OPD's client services has never faltered. With just 140 total staff, OPD attorneys and staff represent clients across the State of Ohio: we provide orientation to all incoming people at the Department of Rehabilitation and Corrections and the Department of Youth Services, working to answer questions and assist with legal issues; we perform trial work, often in the most difficult cases upon request from courts across Ohio; we represent half of the individuals sentenced to death, working as attorneys of last resort in these most serious of cases; we perform some of the highest quality and innovative appellate representation in criminal and juvenile cases in all of the appellate courts across Ohio; we set the standard for representation in criminal and juvenile justice issues in front of the Ohio Supreme Court; we represent individuals parole and revocation hearings (1171 parole hearings in 2020, a 586% increase since 2013); we host trainings for public defenders and appointed counsel nationally and statewide, providing thousands of hours of CLEs; we actively provide support and policy positions to the legislature; we provide technical and reimbursement assistance and expertise to the counties on an increasing and growing basis; we provide a case management system to all county public defenders, providing user support and training; we are one of the most fiscally sound and responsible agencies across the State, having clean audits with no findings; we staff multiple task forces, boards and commissions, and advisory panels; we provide the highest quality investigation and mitigation work to support our own attorneys as well as outside counsel when requested and when available, we started the nation's first Wrongful Conviction Project devoted to non-DNA exoneration cases; and we support our community through ongoing public service projects. This is a non-exhaustive list, and it is a testament to the excellence of the attorneys, investigators, and staff at the OPD. This body made an



investment in OPD in the last budget, that, unfortunately due to the pandemic, never came to fruition. OPD needs the employees we were funded for in HB166, and we need additional staff to meet our statutory duties – including staff to help audit, oversee, and provide expert and technical assistance to Ohio’s 88 counties, especially important now that there is such a significant increase in reimbursement funding.

The proper and diligent oversight of over \$320 million taxpayer dollars to appropriately provide for indigent defense is a duty we take very seriously. But at present staffing, this requires oversight and assistance that OPD is unable to provide because we don’t have enough funds in our operating budget. OPD’s reimbursement staff must review county reports to ensure compliance with the standards and guidelines and notify the county if it is not meeting these requirements. This must be done for all of the 150,000 paper requests that OPD receives each year as part of the reimbursement process. To provide a more efficient reimbursement system, the OPD is in the final stages of developing an electronic reimbursement program. When OPD rolls out the new system, it will include an estimated 4,000 users (including all appointed counsel, public defender, judges, auditors, court administrators, and clerks). While this will undoubtedly save the counties time and money, it will require additional OPD staff to train county personnel and respond to the technical needs of counties. It is imperative that OPD receive funding for additional staff. It is no longer tenable to process indigent defense reimbursement via 13,000 - 14,000 paper bills each month from all 88 counties. If the state is nearly paying full freight for indigent defense, good government administration necessitates that OPD transition this paper system to an electronic one, where transactions may be processed efficiently, and the OPD may gather, assess, and report data on how and where these funds are used. Moving this statewide system from a paper one to an electronic one – in which all court appointed counsel, public defender, judges, auditors, and clerks complete their respective tasks related to reimbursement – is an imperative, and one that requires adequate staffing.

Further, when the reimbursement rate went from 40% to 70% in HB166, OPD experienced a significant increase in demand from counties for assistance from OPD staff. We anticipate further



demand as HB110 funds reimbursement gets closer to 100%. Ohio's system of paying appointed counsel, which has wide variances and artificially suppressed rates, results in increased costs in other areas of the criminal justice system, including jail and prison populations and costs.<sup>1</sup> Good defense attorneys can reduce societal costs and improve public safety. But, as the data shows, good attorneys continue to leave the defense practice because the rates in which they are paid are so low. There are counties in Ohio that have kept rates the same for over 20, even 30 years, with no adjustment for inflation. Recent studies of outcomes in indigent criminal cases have found that Ohio's chronic underpaying of appointed counsel leads to worse outcomes for people who are involved with the criminal justice system.<sup>2</sup> This is why the Office of the Public Defender and the County Commissioner's Association of Ohio (CCAO) are supportive of the state providing 100% reimbursement to the counties for indigent defense.

You probably noted that I said HB110 brings reimbursement funding **close to** 100%. You may hear messaging around the Statehouse that HB110 provides 100% state funded indigent defense. OPD cannot guarantee that the appropriation in HB110 will result in 100% reimbursement to counties over the biennium. With this influx of state money, counties will undoubtedly want to upgrade equipment, do building maintenance, increase wages for attorneys and staff, or make other investments in indigent defense. Meanwhile, OPD has very limited oversight of county spending. We cannot stop counties from taking on additional expenses. This is new territory for Ohio. It is impossible to predict the impact that much state funding will have on the indigent defense system. What OPD can say from experience is that when counties take on large new expenses, it does impact the reimbursement rate for other

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<sup>1</sup>For studies supporting the link between low attorney pay and poor outcomes, see: Lyengar, R. (2007). *An Analysis of the Performance of Federal Indigent Defense Counsel*; and National Bureau of Economic Research – Harvard University and Roach, M. (2010). "Explaining the Outcome Gap between Different Types of Indigent Defense Counsel: Adverse Selection and Moral Hazard Effects," available at Social Science Research Network: <http://ssrn.com/abstract=1839651>.

<sup>2</sup>Roach, Michael A., *Indigent Defense Counsel, Attorney Quality, and Defendant Outcomes*, American Law and Economics Review, May 2014; and Cohen, Thomas H., *Who's Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes*, Social Science Research Network, 2011. Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1876474](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1876474).



counties statewide. It is simply not accurate to advertise HB110 as a guaranteed 100% reimbursement for indigent defense.

OPD is requesting that an additional \$600,000 in FY2022 and \$1 million in FY2023 to hire 15 necessary staff members. OPD was funded to hire seven of those people in FY2021 before the COVID-19 pandemic. The other eight new positions are the result of increased caseloads and workload, outdated reimbursement processes, and increased funding for county reimbursement. The OPD's underfunding is inconsistent with good government practices and cannot continue.

Thank you for the opportunity to testify before your committee. I am happy to answer questions at this time.



ADDENDUM

**Proposed Amendment**

***Funding Amendment***

SECTION 371. 10. PUB OHIO PUBLIC DEFENDER COMMISSION

General Revenue Fund

GRF 019401 State Legal Defense Fund	\$	<del>6,244,609</del>	<u>6,944,609</u>	\$	\$6,419,884	<u>7,519,884</u>
Services						





# BUDGET REQUEST


## THE OFFICE OF THE OHIO PUBLIC DEFENDER

OPD NEEDS AN ADDITIONAL \$1.6 MILLION FOR 15 POSITIONS


OPD GRF OPERATING FUNDS		
GRF 019401	\$6,344,609	\$6,519,884
<b>Funding Needed</b>	<b>\$600,000</b>	<b>\$1,000,000</b>
<b>TOTAL</b>	<b>\$6,944,609</b>	<b>\$7,519,884</b>

**HOUSE BILL**


Sub. House Bill 110 does not provide sufficient operational funding for OPD to meet its constitutional and statutory duties, including oversight and accountability for the more than \$324 million in reimbursement funds.




### OPD'S GROWING RESPONSIBILITIES & UNDERFUNDED DUTIES



**AUDIT**  
OPD reimburses approximately **150,000 county bills** per year, that must be audited for **accuracy, fraud, and abuse** prevention of tax payer dollars.



**SUPPORT**  
Reimbursement will transition from paper to an electronic system, over the next two years, **increasing the users from 900 to 4,000**, who must be supported by OPD staff.



**NEEDED RESOURCES**


15  
EMPLOYEES

↑


8  
needed

↑

7  
unfilled  
during  
COVID

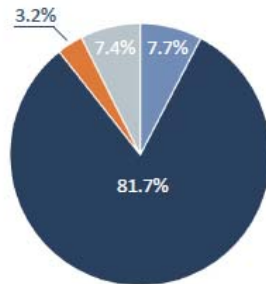


**EXPERTISE**  
OPD acts as a legal and procedural expert for all **88 counties** regarding reimbursement qualifications.



**REPRESENTATION**  
Parole revocation hearings **increased 586%**. In 2020, there were **1,171 hearings**. OPD is the only source of counsel.

### OPD'S BUDGET HAS FOUR COMPONENTS



#### REIMBURSEMENT BUDGET

This budget provides reimbursement to Ohio's 88 counties for the county-level costs of indigent defense. Primarily, costs of county public defender offices, appointed counsel, and contracts with not-for-profit organizations, three of the four indigent defense methods available to the counties. These funds are not available for OPD's operational budget.

**The reimbursement rate is projected to approach 100%.**

#### BRANCH OFFICE BUDGET

This budget provides for the operations of OPD's county-level indigent defense services to 10 counties (Adams, Athens, Brown, Fayette, Jackson, Pickaway, Pike, Ross, Trumbull, and Washington). OPD provides these services as a result of a contract between each county and the OPD to provide indigent defense at the county-level, which is one of four indigent defense methods available to counties.

#### OAJF BUDGET

This budget is not used or available for indigent defense. The OPD acts as a pass-through for the Ohio Access to Justice Foundation—an agency that serves needy Ohioans on civil matters.

#### OPERATING BUDGET

This budget supports the day-to-day operating expenses of the State Public Defender Office and is primarily used to employ staff to help meet statutory duties as prescribed in R.C. 120—among which is oversight and administration of the reimbursement funds.



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