

Greenbook

LBO Analysis of Enacted Budget

Ohio Public Defender Commission

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Appropriation Spreadsheet

LBO Greenbook

Ohio Public Defender Commission

Quick look...

- The Ohio Public Defender Commission (OPD) provides, supervises, and coordinates legal representation for persons who cannot afford to hire an attorney to represent that person in criminal court.
- The budget appropriates a total of \$481.3 million for the FY 2024-FY 2025 biennium, of which \$359.3 million, or 74.6%, is appropriated from the General Revenue Fund (GRF).
- Reimbursement rates for the FY 2024-FY 2025 biennium will be capped at \$75 per hour.

Fund Group	FY 2022 Actual	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
General Revenue (GRF)	\$146,370,807	\$144,431,433	\$175,912,000	\$183,349,000
Dedicated Purpose (DPF)	\$47,264,979	\$59,064,831	\$61,992,400	\$59,992,400
Federal (FED)	\$0	\$0	\$38,300	\$38,300
Total	\$193,635,786	\$203,496,263	\$237,942,700	\$243,379,700
% change	--	5.1%	16.9%	2.3%
<i>GRF % change</i>	--	-1.3%	21.8%	4.2%

Overview

Agency overview

The Ohio Public Defender Commission (OPD) provides, supervises, and coordinates legal representation for persons who cannot afford to hire an attorney to represent that person in criminal court. Also notable are the Commission’s role as: (1) administrator of the subsidy program that partially reimburses counties for indigent defense expenditures related to the operation of local public defender offices or the use of appointed counsel, and (2) administrator of pass-through funding for the Ohio Legal Assistance Foundation (OLAF).

The Commission consists of nine appointed members; the Governor appoints five, including the chair, and the Supreme Court of Ohio appoints the other four. No more than five members can be from one of the two major political parties. The Commission appoints a state public defender who maintains and administers the Office of the Ohio Public Defender.

In addition to its primary fiscal function of administering the state’s county indigent defense reimbursement system, the Commission:

- Establishes the standards and guidelines for county public defenders and appointed counsel, including a maximum fee schedule, and supervising the compliance with these standards.

- Provides technical assistance to county public defenders and appointed counsel.
- Provides legal services to inmates at the state’s correctional facilities, trial-level representation in some capital cases, and appellate and post-appeals representation in capital and noncapital cases.
- Serves as the custodian of funds that are subsequently transferred to OLAF for providing financial assistance to legal aid societies throughout the state.

The board of county commissioners in each county determines the method of providing indigent defense services. As of February 2023, the following indigent defense service systems were in place:

- County public defender (30 counties).
- Court-appointed counsel (88 counties utilize court-appointed counsel to some degree; 40 use court-appointed counsel only (no public defender office or contracts)).
- Contract with State Public Defender (ten counties).
- County contract with a nonprofit corporation (seven counties).
- County public defender and county contract with a nonprofit corporation (one county).

Budget highlights

Indigent defense reimbursement

The budget requires the Ohio Public Defender to reimburse county governments for the costs they incur in operating county public defender offices, joint county public defender offices and county-appointed counsel systems, the counties’ costs and expenses of conducting the defense in capital cases, the counties’ costs and expenses of appointed counsel, and any other costs to provide legal representation to indigent persons. Additionally, the budget permits reimbursements made to counties for this purpose to be capped at rates specified by the General Assembly. For FY 2024 and FY 2025, the rate has been capped at \$75 per hour (temporary law provision). This may have an impact of shifting any exceeding costs away from OPD and to local counties.

Public Defender reimbursement study and report

The budget adds language stating that the intention of the General Assembly is to stabilize costs while allowing the Task Force to Study Indigent Defense, established in H.B. 150 of the 134th General Assembly, to issue its report regarding a study of indigent defense.

Fund abolishment

The budget abolishes the Trumbull County-County Share Fund (Fund 4X70) and consolidates its duties and function with the Multi-County County Share Fund (Fund 4C70).

Analysis of FY 2024-FY 2025 budget

Introduction

This section provides an analysis of the funding for each appropriation line item (ALI) in the Commission's budget. For organizational purposes, these ALIs are grouped into four major categories based on their funding purposes. The analysis for an ALI with a lower category or subcategory designation will appear before that for an ALI with a higher category or subcategory designation. That is, the analysis for an ALI with a category designation of C1:8 will appear before the analysis for an ALI with a category designation of C2:1 and the analysis for an ALI with a category designation of C1:3 will appear before the analysis for an ALI with a category designation of C1:8.

To aid the reader in locating each ALI in the analysis, the following table shows the category in which each ALI has been placed, listing the ALIs in order within their respective fund groups and funds.

In the analysis, each ALI's expenditures for FY 2023 and appropriations for FY 2024 and FY 2025 are listed in a table. Following the table, a narrative describes how the appropriation is used. The narrative is divided into four categories: (1) State Legal Defense Services, (2) County-Level Indigent Defense, (3) Legal Assistance Foundation, and (4) Program Management.

Categorization of Commission's ALIs for Analysis of FY 2024-FY 2025 Budget				
Fund	ALI	ALI Name		Category
General Revenue Fund				
GRF	019401	State Legal Defense Services	C1:1	State Legal Defense Services
GRF	019501	County Reimbursement	C2:1	County-Level Indigent Defense
Dedicated Purpose Fund Group				
1010	019607	Juvenile Legal Assistance	C1:2	State Legal Defense Services
4060	019603	Training and Publications	C4:1	Program Management
4070	019604	County Representation	C1:3	State Legal Defense Services
4080	019605	Client Payments	C1:4	State Legal Defense Services
4N90	019613	Gifts and Grants	C1:5	State Legal Defense Services
5740	019606	Civil Legal Aid	C3:1	Legal Assistance Foundation
5CX0	019617	Civil Case Filing Fee	C1:6	State Legal Defense Services
5DY0	019618	Indigent Defense Support – County Share	C2:2	County-Level Indigent Defense
5DY0	019619	Indigent Defense Support – State Office	C1:7	State Legal Defense Services
Federal Fund Group				
3S80	019608	Federal Representation	C1:8	State Legal Defense Services

Category 1: State Legal Defense Services

This category of line items pays for the provision of legal representation to indigent adults, juveniles, and incarcerated individuals in all courts when the U.S. Constitution requires representation, or when it is requested by the court, the county or joint county public defender,

or an inmate. Most legal matters in which the state provides direct representation involve appeals or death penalty cases. Indigent defense for most other cases is provided locally by public defenders or assigned counsel.

Services and activities

The specific types of services and activities grouped under the State Legal Defense Services are noted below.

- **Appeals and Post-conviction Representation.** Provides legal representation in state and federal courts to indigent persons who have been tried, found guilty, and claim they are unlawfully incarcerated.
- **Death Penalty Representation.** Provides competent legal counsel to indigent persons under the sentence of death (Ohio's death row inmates on direct appeal, state post-conviction, federal habeas corpus, and clemency appeals), as well as legal assistance, criminal investigation and mitigation, and trial services to private appointed attorneys in such cases; supports training seminars on death penalty law to help ensure that the state bar meets requirements imposed under Ohio Supreme Court Superintendence Rule 20.
- **Intake and Prison Services.** Provides: (1) Intake, which fields calls, handles routine questions, and receives initial requests for legal representation, (2) Records Management, which opens new case files, gathers relevant documents, delivers the files to supervisors for attorney assignment, and generates statistical reports, and (3) Prison Legal Services, which provides legal advice to inmates at the three reception centers in Ohio's prison system.
- **Juvenile Legal Assistance.** Provides legal assistance and representation to juveniles who have been committed to the departments of Youth Services (DYS) or Rehabilitation and Correction (DRC); coordinates and provides training to defense attorneys who handle juvenile work and provides legislative advocacy on right to counsel issues and other substantive issues involving children in the juvenile justice system.
- **Legal Resource Center.** Supports the Commission's Law Library, which is maintained pursuant to R.C. 120.04(B)(1) requiring it to maintain an office equipped with a library of adequate size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment.
- **Trial Services.** Provides direct representation and assistance to local counsel in trial-level cases to indigent defendants throughout Ohio.
- **Investigation Services.** Provides both criminal and mitigation investigation services for Commission staff attorneys on trial and appellate-level death penalty and non-death penalty cases on behalf of indigent defendants in both adult and juvenile courts in Ohio; provides criminal and mitigation investigation services for county public defender attorneys and court-appointed attorneys on death penalty and non-death penalty cases on behalf of indigent defendants.

C1:1: State Legal Defense Services (ALI 019401)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
GRF ALI 019401, State Legal Defense Services	\$7,740,692	\$9,816,000	\$11,437,000
% change	--	26.8%	16.5%

This line item supports the operating expenses (personal services, purchased personal services, and supplies, maintenance, and equipment) associated primarily with the Commission's State Legal Defense Services.

The budget earmarks up to \$50,000 in each fiscal year from this line item to be used to provide legal training programs at no cost for private appointed counsel who represent at least one indigent person at no cost, and state and county public defenders and attorneys who contract with OPD to provide indigent defense services. This purpose was previously funded through GRF ALI 019405, Training Account.

C1:2: Juvenile Legal Assistance (ALI 019607)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
DPF Fund 1010 ALI 019607, Juvenile Legal Assistance	\$193,396	\$205,000	\$205,000
% change	--	6.0%	0.0%

This line item supports the provision of certain legal services to children committed to the Department of Youth Services.¹ The entirety of each year's appropriation is typically allocated for personal services. The appropriations will be supported by cash transferred from the Department of Youth Services pursuant to an interdepartmental agreement.

C1:3: County Representation (ALI 019604)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
DPF Fund 4070 ALI 019604, County Representation	\$284,956	\$375,000	\$375,000
% change	--	31.6%	0.0%

This line item contains payments for legal representation, and investigation or mitigation services provided to counties under certain circumstances. The use of this money is restricted to providing legal representation for indigent persons, or to provide investigation or mitigation services.

¹ State law authorizes the State Public Defender to provide legal representation and services to a child committed to DYS relative to the fact, duration, and conditions of the child's confinement. DYS is required to give the State Public Defender access to the child and any DYS institution or record that the State Public Defender needs to provide authorized representation and services (R.C. 120.06 and 5139.04).

C1:4: Client Payments (ALI 019605)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
DPF Fund 4080 ALI 019605, Client Payments	\$637,297	\$800,000	\$800,000
% change	--	25.5%	0.0%

This line item is used for operating expenses. Currently, the line is primarily used to support the Intake Section and Prison Legal Services programs. This line item draws its appropriation from payments collected from certain defendants, and 20%, or \$5, of a nonrefundable \$25 indigent defense application fee.²

C1:5: Gifts and Grants (ALI 019613)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
DPF Fund 4N90 ALI 019613, Gifts and Grants	\$16,083	\$13,400	\$13,400
% change	--	-16.7%	0.0%

This line item is used to expend grants, donations, and awards from public and private sources received for a specific purpose that are credited to the Gifts and Grants Fund (Fund 4N90). Presently, the fund receives an annual gift of \$13,440 from the Ohio State University Moritz College of Law to fund law students for the Commission's Wrongful Conviction Project. The Project focuses primarily on wrongful conviction claims that do not involve DNA evidence, including allegations of flawed science, witness misidentification, and false convictions.

C1:6: Civil Case Filing Fee (ALI 019617)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
DPF Fund 5CX0 ALI 019617, Civil Case Filing Fee	\$482,216	\$620,000	\$620,000
% change	--	28.6%	0.0%

This line item is supported by a portion of filing fees collected in certain new civil actions and proceedings and credited to the Civil Case Filing Fee Fund (Fund 5CX0). The purpose of the money is to fund assistant public defenders and other personnel, equipment, and facilities necessary for operation of the Commission. The majority of these funds are currently being used

² Existing law permits this money to be used to: (1) appoint assistant state public defenders and to provide other personnel, equipment, and facilities necessary for the Commission's operation, (2) reimburse counties for the operation of county public defender offices, joint county public defender offices, and county-appointed counsel systems, and (3) provide assistance to counties in the operation of county indigent defense systems.

to support the operations of the Youth Defense Program, the purpose of which is to provide access to the courts to children who are incarcerated in DYS or DRC.

C1:7: Indigent Defense Support – State Office (ALI 019619)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
DPF Fund 5DY0 ALI 019619, Indigent Defense Support – State Office	\$5,939,563	\$6,000,000	\$6,000,000
% change	--	1.0%	0.0%

This line item is used to fund the Commission’s operating expenses. This line item draws its appropriations from the Indigent Defense Support Fund (Fund 5DY0), and is used as part of the Commission’s county reimbursement system. Fund 5DY0 consists of a mix of fines, fees, and court costs. Under current law, 17% of the revenues credited to Fund 5DY0 are to be used to support the operations of OPD (ALI 019619) and 83% of the funds be used for the purposes of reimbursing the counties for the expense of operating their indigent defense systems (ALI 019618).

C1:8: Federal Representation (ALI 019608)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
FED Fund 3S80 ALI 019608, Federal Representation	\$0	\$38,300	\$38,300
% change	--	--	0.0%

This line item contributes to the funding of State Legal Defense Services, specifically the Death Penalty Division, which provides, coordinates, and supervises post-trial legal representation to indigent defendants in federal courts on federal habeas corpus proceedings where the defendant is appealing the imposition of a death sentence by a state trial court.³

It is supported by money appropriated from the Federal Representation Fund (Fund 3S80), which consists of payments collected from a federal court when it has appointed the State Public Defender to provide legal representation to an indigent defendant in a federal trial or in a federal habeas corpus proceeding, primarily matters involving the death penalty.

³ Habeas corpus is an appeal to the federal courts for wrongful conviction and unconstitutional imprisonment. A habeas petition is filed after a defendant has exhausted his or her direct appeal and state post-conviction remedies. In this instance, a defendant combines all of the prior claims raised on direct appeal and state post-conviction and he or she raises them in one petition in the United States District Court. All habeas cases, win or lose, are reviewed by the United States Court of Appeals for the Sixth Circuit in Cincinnati. In this habeas petition, the defendant may only seek relief on claims that involve a violation of the United States Constitution, for example, a violation of the Sixth Amendment right to effective counsel or a violation of the Eighth Amendment right to present mitigating evidence for sentencing.

Category 2: County-Level Indigent Defense

This category of line items is used by the Commission to provide, facilitate, and improve the delivery of criminal defense services to indigent persons accused of crimes handled by common pleas, municipal, and county courts. With this portion of its budget, the Commission partially subsidizes counties for the cost of providing counsel to indigent persons in criminal and juvenile matters.⁴ These services and activities also include establishing standards (including indigence), guidelines, and maximum fees for state reimbursement of county-level indigent defense services, and monitoring county compliance with those standards.

Beginning FY 2020, instead of capping the reimbursement rate at 50% as under prior law, the state is now required to reimburse counties up to 100%, subject to available appropriations. The FY 2022-FY 2023 budget contained funding that allowed the OPD to provide an indigent defense reimbursement rate of 100% in FY 2022 and an estimated rate of 90% in FY 2023. The FY 2024-FY 2025 biennial operating budget permits the reimbursements made to counties to be capped at rates specified by the General Assembly. The upcoming biennium will cap reimbursement rates at an hourly rate not to exceed \$75 per hour.

The combined amount of GRF and non-GRF appropriations (GRF line item 019501 plus DPF line item 019618) for county indigent defense reimbursement totals \$190.0 million in FY 2024 and \$195.8 million in FY 2025.

C2:1: County Reimbursement (ALI 019501)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
GRF ALI 019501, County Reimbursement	\$130,486,972	\$166,096,000	\$171,912,000
% change	--	27.3%	3.5%

This line item supports the reimbursement of counties for their indigent defense expenditures on both noncapital and capital cases. The agency uses both GRF ALI 019501 and the Indigent Defense Support Fund (Fund 5DY0) ALI 019618 to make distributions to the counties. The budget reflects changes that combine the three ALIs that support the state share of county-level indigent defense costs: GRF 019403, Multi-County: State Share; GRF 019404, Trumbull County: State Share; and GRF 019501, County Reimbursement. Therefore, the projected operating expenses for the multi-county program in FY 2024 and FY 2025, respectively, have been combined into the appropriation for GRF ALI 019501, County Reimbursement.

Historically, the state reimbursed indigent defense costs at or below the statutory cap of 50%. In the FY 2020-FY 2021 biennial operating budget, instead of capping the reimbursement rate at 50% as under prior law, the state is required to reimburse counties up to 100%, subject to available appropriations. The Office of the Public Defender will reimburse counties up to 100% of qualifying costs, and at a rate not to exceed \$75 per hour, in the presently structured system.

⁴ Pursuant to R.C. 120.18, 120.28, and 120.33 to 120.35.

C2:2: Indigent Defense Support – County Share (ALI 019618)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
DPF Fund 5DY0 ALI 019618, Indigent Defense Support – County Share	\$23,352,563	\$23,904,000	\$23,904,000
% change	--	2.4%	0.0%

This line item draws its appropriations from the Indigent Defense Support Fund (Fund 5DY0), and is used as part of the Commission’s county reimbursement system. Fund 5DY0 consists of a mix of fines, fees, and court costs.

Category 3: Legal Assistance Foundation

The lone line item in this category is used to pass through funding to the Ohio Legal Assistance Foundation (OLAF), a nonprofit entity, created by statute, and charged with administering state funds for Ohio’s legal aid societies.⁵

C3:1: Civil Legal Aid (ALI 019606)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
DPF Fund 5740 ALI 019606, Civil Legal Aid	\$26,510,731	\$30,000,000	\$28,000,000
% change	--	13.2%	-6.7%

This item supports the state’s legal aid societies in Ohio, which collectively serve all 88 counties. These funds are distributed to legal aid societies throughout the state pursuant to a statutory formula based on poverty population.

The money for these purposes is appropriated from the Civil Legal Aid Fund (Fund 5740), which consists of: (1) interest generated on lawyer and title insurance trust accounts, and (2) additional filing fees collected on certain new civil actions and proceedings. The interest revenues fluctuate, as they are sensitive to changes in the Federal Funds rate, as well as the savings rate which is tied to the former.

The budget includes language that authorizes the transfer of \$1.0 million from the GRF to Fund 5740 in each fiscal year and provides for the following two earmarks:

1. \$500,000 in each fiscal year for the sole purpose of providing legal services for economically disadvantaged individuals and families seeking assistance with legal issues arising as a result of substance abuse disorders.
2. \$250,000 in each fiscal year for the sole purpose of providing legal services for veterans.

⁵ The Foundation, established by H.B. 152 of the 120th General Assembly, effective July 1993, develops financial support and solicits financial contributions for use in providing assistance to Ohio’s legal aid societies.

Category 4: Program Management

The Program Management category includes the services and activities performed by the Commission's Administrative Division, which provides the necessary services common to most state agencies, including fiscal and accounting, personnel and training, computer information systems, purchasing, fleet management, and delivery. The Division also provides certain required services: collecting reimbursement from the counties for legal services provided by the Ohio Public Defender, processing reimbursement to the counties for indigent defense programs, and producing educational seminars and conferences.

C4:1: Training and Publications (ALI 019603)

Fund/ALI	FY 2023 Actual	FY 2024 Appropriation	FY 2025 Appropriation
DPF Fund 4060 ALI 019603, Training and Publications	\$16,751	\$75,000	\$75,000
% change	--	347.7%	0.0%

This line item supports training and educational programs for attorneys and others involved with the legal representation of indigent persons. The line item is supported by money appropriated from the Training and Publications Fund (Fund 4060). The money is expected to be generated from a nominal fee that the Commission plans to charge attendees of its training and educational programs.

FY 2024 - FY 2025 Final Appropriations

All Fund Groups

Line Item Detail by Agency				Appropriations			FY 2023 to FY 2024	Appropriations	FY 2024 to FY 2025
				FY 2022	FY 2023	FY 2024	% Change	FY 2025	% Change
Report For: Main Operating Appropriations Bill				Version: As Enacted					
PUB Ohio Public Defender Commission									
GRF	019401	State Legal Defense Services	\$ 7,411,101	\$ 7,740,692	\$ 9,816,000	26.81%	\$ 11,437,000	16.51%	
GRF	019403	Multi-County: State Share	\$ 4,747,624	\$ 4,137,616	\$ 0	-100.00%	\$ 0	N/A	
GRF	019404	Trumbull County - State Share	\$ 1,985,860	\$ 2,045,578	\$ 0	-100.00%	\$ 0	N/A	
GRF	019405	Training Account	\$ 28,830	\$ 20,575	\$ 0	-100.00%	\$ 0	N/A	
GRF	019501	County Reimbursement	\$ 132,197,392	\$ 130,486,972	\$ 166,096,000	27.29%	\$ 171,912,000	3.50%	
General Revenue Fund Total			\$ 146,370,807	\$ 144,431,433	\$ 175,912,000	21.80%	\$ 183,349,000	4.23%	
1010	019607	Juvenile Legal Assistance	\$ 210,812	\$ 193,396	\$ 205,000	6.00%	\$ 205,000	0.00%	
4060	019603	Training and Publications	\$ 0	\$ 16,751	\$ 75,000	347.74%	\$ 75,000	0.00%	
4070	019604	County Representation	\$ 276,296	\$ 284,956	\$ 375,000	31.60%	\$ 375,000	0.00%	
4080	019605	Client Payments	\$ 569,590	\$ 637,297	\$ 800,000	25.53%	\$ 800,000	0.00%	
4C70	019601	Multi-County: County Share	\$ 36,661	\$ 1,078,961	\$ 0	-100.00%	\$ 0	N/A	
4N90	019613	Gifts and Grants	\$ 9,443	\$ 16,083	\$ 13,400	-16.68%	\$ 13,400	0.00%	
4X70	019610	Trumbull County - County Share	\$ 13,917	\$ 552,315	\$ 0	-100.00%	\$ 0	N/A	
5740	019606	Civil Legal Aid	\$ 14,346,642	\$ 26,510,731	\$ 30,000,000	13.16%	\$ 28,000,000	-6.67%	
5CX0	019617	Civil Case Filing Fee	\$ 413,050	\$ 482,216	\$ 620,000	28.57%	\$ 620,000	0.00%	
5DY0	019618	Indigent Defense Support - County Share	\$ 25,660,415	\$ 23,352,563	\$ 23,904,000	2.36%	\$ 23,904,000	0.00%	
5DY0	019619	Indigent Defense Support - State Office	\$ 5,728,153	\$ 5,939,563	\$ 6,000,000	1.02%	\$ 6,000,000	0.00%	
Dedicated Purpose Fund Group Total			\$ 47,264,979	\$ 59,064,831	\$ 61,992,400	4.96%	\$ 59,992,400	-3.23%	
3S80	019608	Federal Representation	\$ 0	\$ 0	\$ 38,300	N/A	\$ 38,300	0.00%	
Federal Fund Group Total			\$ 0	\$ 0	\$ 38,300	N/A	\$ 38,300	0.00%	
Ohio Public Defender Commission Total			\$ 193,635,786	\$ 203,496,263	\$ 237,942,700	16.93%	\$ 243,379,700	2.29%	