



Report of the Ohio Indigent Defense Study Task Force

April 2024

Nathan Manning
State Senator
13th District



Jim Hoops
State Representative
81st District

Re: Indigent Defense Study Task Force

Members of the General Assembly,

Over the past couple months, we have had the honor to chair the Indigent Defense Study Task Force. We would like to take this opportunity to explain the Task Force and provide recommendations for the General Assembly moving forward.

The right to counsel has been established through the Sixth and Fourteenth Amendments of the US Constitution. Specifically, the 1963 Supreme Court ruling in *Gideon v. Wainwright* requires states, counties, and local jurisdictions to provide public representation for defendants unable to retain counsel on their own. In Ohio, the State Public Defender's office is tasked with providing such counsel, and has established public defender offices in several counties to provide this service. In other counties, indigent defense is handled by appointed private counsel or county public defender offices that are reimbursed by the state. However, there has been a need to study the funding and delivery mechanisms for Ohio's indigent defense system.

Recently, the Ohio State Bar Association's Future of Indigent Defense Task Force was established to review current practices, delivery models, and consider alternatives to ensure a cost-effective system that maintains local input and ensures the right to counsel for Ohioans. According to the report issued by that Task Force in January 2024, "[f]unding for the system has historically been a partnership between the state and county governments, originally contemplated in a statutory agreement as a 50/50 split. However, state funding has fluctuated significantly over the years. According to the State Public Defender, between 2009 and 2019, state reimbursement for indigent defense had been below 50 percent in all but 10 months of that period."

During the 134th General Assembly, House Bill 150 established this 17-member Task Force to study Ohio's indigent defense system and provide recommendations to the General Assembly regarding the delivery, structure, and funding of indigent defense.

The Task Force consisted of the following members (in alphabetical order):

Judge Richard Berens, Fairfield County (Ohio Supreme Court's designee)
Herman Carson (member of the Ohio Public Defender Commission)
William Creedon (Chair of the Ohio Public Defender Commission)
Commissioner Steven Davis, Fairfield County (County Commissioners Association of Ohio's designee)
Matthew Donahue (Governor's designee)
Representative Jim Hoops (Co-Chair of the Task Force)
Kelli Howard (member of the Ohio Public Defender Commission)
Senator Paula Hicks-Hudson
James Lowe (Attorney General's designee)
Senator Nathan Manning (Co-Chair of the Task Force)
Judge Stephen McIntosh, Franklin County (Ohio Judicial Conference's designee)

Elizabeth Miller (State Public Defender)
Representative Ismail Mohamed
Senator Michelle Reynolds
Melissa Schiffel (Ohio Prosecuting Attorney Association's designee)
Representative Jim Thomas
Judge Dean Wilson, Perry County-retired (Ohio State Bar Association's designee)

Three meetings took place on January 25th, February 8th, and February 29th. The Task Force heard testimony from several members and interested parties such as the Sixth Amendment Center, Ohio Association of Criminal Defense Lawyers, Allen County Commissioner Cory Noonan, and Delaware County Public Defender Carlos Crawford. We appreciated the valuable points of view and information provided by all those who testified. We would like to especially thank The Ohio State Bar Association's Task Force whose report served as a basis for discussions and testimony during the course of these meetings.

According to the legislation, the Task Force must report its recommendations to the General Assembly by April 3, 2024. In this report, you will see testimony presented to the Task Force and letters submitted by several members detailing their takeaways and recommendations moving forward.

After much discussion and consideration, we would like to make the following additional recommendations moving forward:

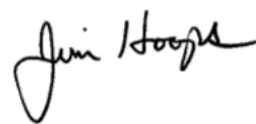
1. The legislature continue to explore and analyze the Ohio State Bar Association's recommendations as well as potentially pursuing legislation prior to the next operating budget cycle.
2. The General Assembly should pursue a fiscal analysis regarding the State's indigent defense system. Results of the analysis could help construct a more consistent and reliable financial forecast, such as the possibility of a formula for indigent defense that can be used during the State's biennial budget process.
3. Engage with stakeholders such as the State Public Defender and counties to discuss delivery systems for indigent defense. This includes exploring the possibility of establishing regional offices to assist with the delivery of services in underserved areas in the State, and permitting part-time public defenders.
4. Consider a centralized system in which the State Public Defender oversees the administration of the court appointed attorney payment process.
5. Preserve the court-appointed counsel system in counties where the legal community finds it effective and beneficial.
6. Be cognizant during discussion of the unintended consequences of expanded state government and its effect on counties, municipalities, and small businesses.

We would like to thank the members of the Task Force for their time, attention, and efforts to improve Ohio's indigent defense system.

Sincerely,



State Senator Nathan Manning
Ohio's 13th Senate District



State Representative Jim Hoops
Ohio's 81st House District

**Letters from members of the Ohio Indigent Defense
Study Task Force**



March 19, 2024

Senator Nathan Manning, Co-Chair
Representative Jim Hoops, Co-Chair
HB 150 Indigent Defense Task Force
Sent via email

Senator Manning and Representative Hoops:

Thank you both for your continued engagement and leadership of the HB150 Indigent Defense Task Force (“Task Force”). On behalf of the Office of the Ohio Public Defender (“OPD”), I am incredibly grateful for the efforts and substantive work of the Task Force.

A founding case for indigent defense originated in 1963 when the United States Supreme Court ruled in *Gideon v. Wainwright* that the Fifth and Sixth Amendments of the United States Constitution require states to ensure all Americans, no matter their socioeconomic status, be afforded the right to counsel. In its decision, the Supreme Court found that the assistance of counsel is “one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty,” and the Sixth Amendment serves as a warning that “if the constitutional safeguards it provides be lost, justice will not still be done.”¹

More than 60 years post *Gideon*, roughly 80% of defendants in the United States require representation by public defenders and court-appointed counsel.² These defendants are our constituents, neighbors, and relatives. Ensuring that those in need of counsel are afforded that right is at the center of OPD’s mission and work, and it is from that standpoint that we offer the following considerations as the Task Force moves forward.

Takeaways From the Task Force Meetings

The OPD’s initial takeaway from the three Task Force meetings is appreciation for the level of interest, productive discussions, as well as commitment to progress demonstrated by the Task

¹ *Clarence E. Gideon v. Louis L. Wainwright, Corrections Director*, 372 U.S. 335 (1963).

² <https://harvardlawreview.org/blog/2023/03/reframing-the-indigent-defense-crisis/> ;
<https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html>



Force members. The diversity of professional and personal experiences within the Task Force was instrumental in ensuring we all heard valuable and varying opinions relating to indigent defense.

Points of Testimony OPD Found Most Valuable

While all testimony contributed greatly to the work of the Task Force, the OPD found the input from the local county commissioners, counsel, and judges most valuable. Specifically, OPD aligns with the testimony provided by Franklin County Court of Common Pleas Judge Stephen McIntosh, Fairfield County Commissioner Steve Davis, Delaware County Public Defender Carlos Crawford, and Allen County Commissioner Cory Noonan relating to the importance of local control. The OPD agrees that county governments and justice system professionals who live and work in those respective jurisdictions know their communities best; and therefore, should continue to possess the authority to choose which indigent defense delivery model will work best for their county.

The Ohio State Bar Association (“OSBA”) recommended a system in which counties choose whether to “opt in” or “opt out” of indigent defense services provided by the State, and OPD agrees with Commissioner Davis that counties should not be financially penalized for deciding to opt out. The OPD therefore emphasizes the OSBA’s recommendation that indigent services in every county be fully State funded, with opt-out counties being able to plan and rely on the availability of a 100% reimbursement rate provided the OPD is given advance notice of opt-out county’s biennial budgets, and all submissions meet the standards and guidelines for reimbursement.

Next Steps Recommended By OPD

The OPD strongly urges legislative action *and* funding to implement the OSBA’s recommendations. The Ohio Supreme Court previously convened two Task Forces to study indigent defense and at the conclusion of both, those Task Forces issued reports (in 1992³ and 2006⁴), identifying weaknesses in and challenges to Ohio’s current indigent defense infrastructure. The OPD remains grateful to Governor DeWine and the General Assembly for the historic increases in indigent defense funding, but interested parties agree that the current system is not sustainable, both financially and in terms of ensuring quality, constitutionally

³ Report of the Supreme Court Task Force to Study Court Costs and Indigent Defense (“the Wright report”) (September 1992).

⁴ Report and Recommendations of the Ohio Supreme Court Task Force on Pro Se & Indigent Litigants (April 2006), https://www.supremecourt.ohio.gov/docs/Publications/prose/report_april06.pdf .



sound representation for Ohioans. We know the system must and can be improved with structural and financial reform. The OSBA's Report and Recommendations provides the path forward.

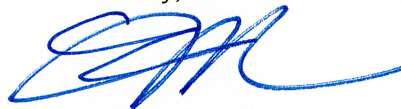
The OPD urges legislative action to provide the requisite statutory authority and funding to allow OPD to be responsive to counties that wish to opt in, and to provide stable and predictable funding to those counties that wish to opt out. Counties, particularly in rural areas, have reached out to OPD and asked to join the OPD to deliver indigent defense services. But, historically and at present, the OPD does not have the requisite staffing or funding to take on additional counties. Funding and legislative changes are the first steps in addressing the need for sufficient quality counsel in our communities, particularly in rural areas as they are experiencing significant hardships in finding qualified counsel who are willing and able to provide indigent defense representation.

The OPD further urges the General Assembly to build in sufficient oversight of Ohio's future indigent defense systems, to ensure our government is meeting its constitutional obligations in providing quality representation that both protects Ohioans' constitutional rights and honors the public trust with its responsible use of public funds. As emphasized in the Sixth Amendment Center's testimony, it is solely the State's duty to safeguard and protect the people's Sixth Amendment rights. Oversight is imperative to achieving and ensuring quality representation, accountability, and a good use of taxpayer dollars.

In closing, the OPD wants to again extend its gratitude to the General Assembly, the OSBA, the County Commissioners Association of Ohio, the Ohio Judicial Conference, and Task Force members for its outstanding work on this important issue. The OPD is ready and eager to assist the Task Force and the General Assembly with the next steps in making the OSBA recommendations a reality.

On behalf of OPD, I thank you for your time, consideration, and I look forward to working with you.

Sincerely,



Elizabeth R. Miller, State Public Defender





Ohio Public Defender Commission

William R. Creedon, *Chair*

Mary Augsburger
John Danish
Linda S. Janes
John McCaffrey
S. Michael Miller
R. Robert Umholtz

March 19, 2024

The Honorable Nathan H. Manning, Ohio Senate
The Honorable James M. Hoops, Ohio House of Representatives
HB150 Indigent Defense Task Force
Sent via email

Co-Chair Senator Manning and Co-Chair Representative Hoops:

On behalf of the Ohio Public Defender Commission, thank you for your time and effort leading the HB150 Indigent Task Force. The commission is immensely grateful to Governor DeWine and his unprecedented focus on improving funding for Ohio's indigent defense system and the General Assembly's significant financial support in its recent biennial budgets. With the advent of additional funding, the numerous and varied stakeholders in Ohio's indigent defense system have reached a consensus that the current reimbursement-based model to fund indigent defense no longer efficiently serves Ohio's taxpayers and a new system is needed. However, stakeholders also agree that the new system must find a balance between the efficiencies of a state-funded system and the unique and varied local cultures of Ohio's 88 county courthouses.

The commission supports the proposed indigent defense system recommended by the Ohio State Bar Association's task force wherein counties have the ability to "opt in" or "opt out" of indigent defense services provided by the State. The OSBA task force was comprised of voices throughout the indigent defense system including county commissioners, judges, law directors, prosecuting attorneys, bar associations, criminal defense attorneys, appointed counsel, and public defenders. The commission thanks OSBA Immediate Past President Judge Dean Wilson, OSBA CEO Mary Amos Augsburger, and the members of the OSBA task force for their dedication and commitment to improving Ohio's indigent defense system. It is a testament to Ohio's need for a new system that so many different voices can reach a consensus.

The OSBA's recommended system promotes efficiency and saves costs by reducing administrative redundancies between numerous counties while protecting an individual county's ability to control the delivery of indigent defense services best suited for its courthouse. The OSBA's recommended system also preserves the important role of appointed counsel in indigent defense, ensuring state-wide resources to promote

representation in Ohio's rural counties while maintaining local control of the appointment process.

Moving forward, the commission encourages the General Assembly to build on the momentum of this opportunity when all stakeholders agree that a state-funded system founded on local control is needed to improve Ohio's indigent defense system and serve Ohio's taxpayers. The commission urges the General Assembly to pass legislation and fund a new indigent defense system for Ohio based on the recommendations from OSBA's task force. The commission looks forward to assisting in this endeavor and is ready to work with its partners in the indigent defense community to be a good steward of taxpayer dollars while serving the needs of indigent Ohioans.

Sincerely,



William Creedon

Chair - Ohio Public Defender Commission

The Supreme Court of Ohio

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE
SHARON L. KENNEDY

CHIEF JUSTICE
SHARON L. KENNEDY

JUSTICES
PATRICK F. FISCHER
R. PATRICK DEWINE
MICHAEL P. DONNELLY
MELODY J. STEWART
JENNIFER BRUNNER
JOSEPH T. DETERS

TELEPHONE 614.387.9070
FACSIMILE 614.387.9079
supremecourt.ohio.gov

March 19, 2024

Re: Indigent Defense Task Force

Dear Co-Chair Manning and Co-Chair Hoops,

Thank you for your leadership of the Indigent Defense Task Force. Through your guidance, the work of the Task Force will help ensure that all Ohioans have equal access to justice. As Judge Stephen McIntosh commented to the Task Force on behalf of the Ohio Judicial Conference, we all share the same goal of “guaranteeing access to justice through qualified legal representation.”

The purpose of state government is to serve and protect all its citizens, regardless of their status or residence. The General Assembly breathes life into these goals through its budgeting process and legislative agenda, and lawmakers will look to the final report of the Task Force in their future deliberations regarding access to effective indigent defense.

This letter provides a statement as to why local input is key to achieving quality indigent defense across Ohio. It also provides recommendations on how to achieve this goal.

The recommendations are threefold. First, the plan ensures that a county’s decision on which delivery system is implemented is based on the input of all interested local parties, including judges, attorneys, and county commissioners. Second, it addresses the issue raised during Task Force testimony of county-commissioner involvement in the reimbursement process. Lastly, keeping lawyers engaged in underserved rural counties is crucial to maintaining access to quality legal services in every county of Ohio. Solo practitioners and other private practitioners often use court-appointed-counsel cases to supplement their legal work and serve the legal needs of the community. Therefore, it is important to ensure court-appointed-counsel work is not cut-off from counties that utilize it and do it well.

Establishing local commissions

We all believe that local problems are best solved with local solutions. Therefore, local control is critical.

Ohio has a long, rich history of allowing the governments closest to the people to make decisions best suited for their needs. To that end, local officials, including judges, must participate in the decision-making process related to the delivery system of indigent defense in their county.

The proposal is that each county wishing to change the delivery system of indigent defense establish a local commission. The membership of the commission would include one judge each from the court of common pleas general and juvenile divisions, a municipal or county court judge, a county commissioner, and a practicing attorney who provides indigent-defense services in the county. This commission would be the best arbiter of whether opting into a state-public-defender system, establishing a county-public-defender system, or maintaining a court-appointed-counsel system would best serve the local needs for indigent defense.

My designee to the Task Force, Judge Richard Berens of the Fairfield County Common Pleas Court, General Division, currently serves in a county that has a well-organized and efficient indigent-defense system through the court-appointed-counsel system. Judge Berens said it best when he said, “The most effective and best way to provide indigent defense funding in one county is not necessarily the same throughout the state.”

Establishing a local commission that includes representatives of the judiciary and the practicing bar, along with a county commissioner, will ensure that each county can address its unique needs. In fact, local input was a priority expressed by several members of this Task Force as well as by members of interested groups that testified before it.

Reorganizing the reimbursement process

For those counties where the county commissioners wish to be removed from the reimbursement process with the Office of the Ohio Public Defender, an alternative payment delivery system could be established. Specifically, when a court-appointed attorney completes service on an indigent-defense case, the attorney already submits his or her fee application to the judge for review, approval, and signature. In lieu of submitting the fee application to the county for payment, the judge would send the approved fee application directly to the Office of the Ohio Public Defender for reimbursement to the court-appointed counsel. This new payment system would relieve the county commissioners of the duties of budgeting for and seeking reimbursement from the Office of the Ohio Public Defender. This change would be more efficient and cost-effective.

Preserving court-appointed work for Ohio attorneys

Lastly, the recommendations of this Task Force ought not interfere with the excellent work the General Assembly has already undertaken to help address the need for legal services in underserved rural areas of Ohio. Through the passage of House Bill 150, which created this Task Force, the General Assembly established the Rural Practice Incentive Program to help attract and keep attorneys in underserved areas.

This program could not have come at a more critical time, as over 6.5 million Ohioans in 82 counties reside in an underserved community. Ensuring that attorneys in underserved areas have access to sufficient legal work to justify staying in that county is crucial to achieving access to justice across the state. As of March 8, 2024, of the 73 licensed-attorney applicants, it appears that 36 are eligible to participate in the Rural Practice Incentive Program, and of the 5 law-school applicants, 4 appear to be eligible.

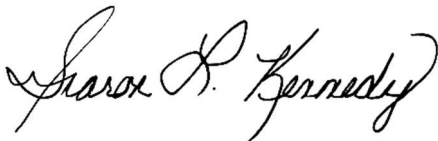
As discussed during the Task Force meetings, local courts appoint counsel in a variety of circumstances to meet the needs of indigent defendants. Sometimes counsel is appointed simply to address a conflict of interest, but in many counties, such as Fairfield, local courts maintain a robust court-appointed-counsel list and appoint from that list. In courts across Ohio, judges use a comprehensive set of criteria when selecting court-appointed counsel to serve on a case. Judges are in the best position to impartially determine what special skillsets or practice-areas an attorney needs to serve an indigent client.

Court-appointed systems prove to be efficient, effective, and financially wise for some counties. During Task Force testimony, it was noted that Allen County, which has a county-public-defender office, has an approximate population of 100,838, and the amount spent by the county for indigent defense totaled around \$1.6 million in 2023. In contrast, Fairfield County, which has a court-appointed-counsel system and a population of over 165,000, spent around \$1.1 million that same year. These numbers illustrate that what may be best for one county is not necessarily good for another. However, court-appointed-counsel systems have proven to be cost-effective and to deliver quality legal representation when monitored by local judges, and they may also be the path to ensuring sufficient legal services in the underserved areas of this state.

As this Task Force prepares to make recommendations on the delivery system of indigent defense in Ohio, I encourage its members and the General Assembly to consider the points and solutions offered in this letter and the voices of Ohio judges as expressed by the Ohio Judicial Conference.

Thank you again for the opportunity to lend recommendations to the work of the Task Force.

Sincerely,

A handwritten signature in black ink that reads "Sharon L. Kennedy". The signature is written in a cursive, flowing style.

Sharon L. Kennedy
Chief Justice

Cc: Paul Pfeifer, Ohio Judicial Conference
File

**The Honorable Nathan Manning
State Senator – District 13
Indigent Defense Study Task Force, Co-Chair
Ohio Senate
1 Capitol Square, Ground Floor
Columbus, Ohio 43215**

**The Honorable Jim Hoops
State Representative – District 81
Indigent Defense Study Task Force, Co-Chair
Ohio House of Representatives
77 S. High Street, 14th Floor
Columbus, Ohio 43215**

Co-Chairs Manning and Hoops:

Thank you for your leadership on this important task force - the opportunity to serve has been an honor. I commend the legislature for taking the time to deliberate over this crucial issue outside of the chaotic state budgeting process. Ohio's constitutional requirement to provide public defense is a cornerstone of our democratic system and one of the most important rights conferred to our citizens. This has been recognized by the legislature in the most recent state operating budgets, as it has taken on most of the costs associated with providing counsel to indigent defendants.

However, the state picking up the tab does not guarantee progress, as systemic changes are needed to ensure that the system we're funding operates efficiently and equally throughout the state. The indigent defense system is a complex one with a lot of stakeholders at the state and local levels. It is imperative that proposed systemic changes be studied and agreed to by all. To that end, the Ohio State Bar Association convened a diverse group of stakeholders to meet and consider making a recommendation to the legislature. After several meetings we agreed on a recommendation to allow for counties to opt in to state delivery of indigent defense services.

The OSBA also lobbied for the legislature to pass House Bill 150 in the 134th General Assembly, a bill that created the Rural Practice Incentive Program and a task force to study the future of indigent defense in the state of Ohio. It was proper for these two issues to be considered together by the legislature because the delivery of indigent defense has profound impacts on access to lawyers in this state, as it relates to our constitutional obligation to provide public defense and our moral obligation to meet the civil needs of every Ohioan.

This issue was the priority of my presidency at the OSBA, and it continues to drive my involvement in the task force. As a judge in a rural county, our reliance on appointed counsel from outside the county is unacceptable. It is not an efficient way to provide services and it also demonstrates the lack of counsel available to meet the civil needs of my community. But the

solution to this problem cannot come in the form of abandoning appointed counsel in favor of state public defenders.

We are a non-unified court state. And while that comes with challenges sometimes in the form of a lack of consistency, the value of local discretion and decision-making cannot be overstated. This task force has demonstrated that local decision-making and control is in the best interest of Ohio. We saw in the testimony of Judge McIntosh that judges can take a pragmatic, fair, and responsible approach to appointing counsel to ensure that the decision is in the best interest of the defendant. We heard from Commissioner Davis about how a county can run an efficient system locally by taking ownership of their budget and working with the judiciary and bar to ensure qualified legal representation. We also heard from the Ohio Association of Criminal Defense Lawyers that any delivery model needs appointed counsel, a relationship with the bench and bar, and decision-making at the local level.

While I agreed with the aforementioned testimony and most of the discussions with the task force, I took issue with the testimony provided by the Sixth Amendment Center. It is clear from the testimony provided that their organization takes a more academic approach to review. While a top-down method with uniform state level decision-making for all 88 counties is certainly easier to administer, it ignores the benefits of local decision-making and the practical realities of Ohio.

Their testimony made sure to point out their concern for state public defenders who might be out of a job if a county decides to change their delivery system, but they made no mention of concern for the thousands of appointed counsels that would be out of a job if the delivery system were to completely transition to a state public defender office. In failing to recognize this, they also failed to account for the problem that is created when appointed counsels are forced to leave a county that changes its delivery system and the corresponding impact on civil legal needs or the availability of counsel for conflict cases. We heard from Carlos Crawford of the Delaware County Public Defender's office that their appointed counsel list dropped from approximately 80 attorneys to 30 when they switched to a county office – and that is in one of the fastest growing counties in the country. Imagine what would happen in my county?

Finally, the Sixth Amendment Center's proposed solution to lock a county into an opt-in decision vis-à-vis a statutory change does not create a permanent situation – it merely requires a change in statute to reverse the decision. Thus, the only thing their proposal accomplishes is to take decision-making away from the local government and hand it over to a state agency.

Financial certainty must be achieved. The counties want assurances that they will be able to meet their constitutional obligations. The state wants assurances that their investment in the system can be properly budgeted for and efficiently and effectively operated. But financial certainty should not come at the cost of a state takeover. Instead, the state should consider other methods to ensure financial certainty, like using a third party to study our system and to recommend a way to properly budget for indigent defense with predicative costs and caseloads that consider the particulars of each county.

The unanimously approved OSBA Task Force report gives us great momentum for a comprehensive solution, but there is still work to be done. The system will be set up to fail if counties are financially incentivized to turn the decision of indigent defense method of delivery over to the state. While I stand by the option of allowing both a state and county method of delivery, we must ensure that implementation takes into account the varying needs and circumstances of each unique Ohio county. As the law is today, county commissioners should continue to make the initial decision on what type of delivery system their counties should have, but if commissioners decide to opt in to the state-run system, local judges and practitioners should be involved in the decision-making for the type of delivery system that will be used under the state system. They know what is best for their communities and could work with the state to ensure the needs of local citizens are met.

I appreciate your consideration of these issues. Thank you again for the opportunity to serve on this task force and for your leadership on this very important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Wilson', with a long horizontal flourish extending to the right.

Dean L. Wilson
Retired Municipal Judge
Perry County

March 19, 2024

Senator Nathan Manning
Representative Jim Hoops

RE: House Bill 150 Indigent Defense Task Force

Dear Co-Chairs Manning & Hoops:

I am delighted to have this opportunity to provide a letter of support for the portion of House Bill 150 which addresses Indigent Defense. I have dedicated my career to public defense, most recently as the Deputy Director of the Montgomery County Public Defender Office. I would like to focus on recommendations from the Ohio State Bar Association (OSBA) regarding the Future of Indigent Defense, The Sixth Amendment Center and funding.

The OSBA Report and Recommendations on the Future of Indigent Defense provides comprehensive recommendations. These recommendations allow for local communities to have input on the delivery model that works best for their community. At the same time, this would allow the Ohio Public Defender Office (OPD) to provide further support and ensure continuity of representation provided to people who appear before the courts across Ohio. Currently, The Ohio Public Defender Office oversees various OPD branch offices. Ohio is a rural state; thus, areas of Ohio may benefit from a regional office that can handle cases in surrounding counties. A study may be helpful to determine which areas of Ohio would benefit best from a regional vs county public defender office.

The Sixth Amendment Center made one recommendation that I think is important to note. Once a county opts into public defender services administered by OPD, there should not be an option to opt out. My reasoning is we are dealing with people's lives – both employees and clients. There needs to be consistency. Changing employment, even between county to state or vice versa, can impact the lives of the employees from position retention to salary to health care to retirement. This can have a trickle-down effect impacting the clients served. Continuity and consistency require finality of decisions.

The Ohio Legislature should consider consulting with The Sixth Amendment Center. They previously conducted a limited study on the Hamilton County Public Defender Office and have previously assisted other states in converting to a state-run public defense system. It would benefit the process to consult with The Sixth Amendment Center as well as other states that have converted to state run public defense systems to see how these entities managed funding.

To make the transition to state-run public defense will require additional funding. Consultation with The Sixth Amendment Center and other states regarding the management of funding is essential. To determine an initial amount needed, the legislature should reach out to an accounting firm or look to graduate program(s) to see if they would have an interest in helping determine the costs. As Public Defense benefits all people, additional revenue can be raised by adding fees to such privileges as driver's license, license plates, state IDs, or other licensing.

Thank you for providing me with the opportunity to participate in this process. Public Defense is a constitutional requirement that benefits the people impacted by the Criminal Justice System.

Respectfully,

A handwritten signature in blue ink that reads "Kelli R. Howard". The signature is written in a cursive style with a large, stylized "K" and "H".

Kelli R. Howard
Attorney at Law

The seal of the Delaware County Prosecutor's Office is circular. It features a central figure, possibly a person or a symbol, surrounded by the text "PROSECUTOR'S OFFICE" at the top and "DELAWARE COUNTY OHIO" at the bottom. A banner at the bottom of the seal contains the motto "WITH GOD ALL THINGS ARE POSSIBLE".

Melissa A. Schiffel

Delaware County Prosecutor

3.14.24

Indigent Defense Study Task Force
Task Force Chairs Senator Manning and Representative Hoops
Via Email

Dear Senator Manning and Representative Hoops:

Thank you for the opportunity to participate in the Indigent Defense Study Task Force. I am glad that the legislature heeded the call from the Ohio State Bar Association to look deeper at the funding of indigent defense in Ohio. I was able to serve on both this Task Force and the OSBA Task Force, and two things that are clear from my service on both Task Forces are that 1) the reimbursement of indigent defense costs must continue from the State; 2) the type and model of indigent defense is a decision that should be made at the local level for what will best serve indigent defendants and the criminal justice system in the specific locale.

I won't spend too much time on the continued reimbursement of indigent defense by the State, except to say that is working. However, there is a need for continued oversight into what is a proper reimbursable expense for indigent defense and education for all stakeholders on what is proper expense would be a good idea.

The criminal justice system operates at its best when there is competent, qualified, efficient and dedicated counsel for both the State (prosecutors) and defendants on both sides of the aisle. The best way to ensure this type of representation for indigent defendants is to rely on local stakeholders to make the decision for their communities. As we heard at the Task Force, what works in Delaware County may not be appropriate for Fairfield County. Or, what works in Ross County as a regional office, may not work in Delaware County.

But, it should be underscored and emphasized---the people who understand what will and what will not work for indigent defense are the local stakeholders who practice in the local criminal justice system every day. I fully support an "opt in" model of indigent defense in which the local stakeholders have the ability to decide what is best for the criminal justice system in their communities.

While it is not the focus on this Task Force, I do want to seize the moment to continue to emphasize how important it is that indigent defense and prosecution continue to be funded and the practice of law in both areas continues to be incentivized for lawyers. I applaud the legislature

for recently passing the law that offered some loan forgiveness to lawyers practicing in the rural areas. While I am certainly not a huge proponent of government spending, this was necessary, and it will continue to be necessary to fully fund both indigent defense and prosecution. This includes funding for investigators, victim service providers, and the normal day-to-day costs associated with both defense and prosecution.

Thank you for reading this far!

Sincerely,

A handwritten signature in blue ink that reads "Melissa Schiffel". The signature is written in a cursive, flowing style.

Melissa Schiffel
Delaware County Prosecuting Attorney



BOARD OF COMMISSIONERS

Commissioners:
Steven A. Davis
Jeffrey M. Fix
David L. Levacy

County Administrator
Aundrea N. Cordle

Deputy County Administrator
Jeffrey D. Porter

Clerk
Rochelle Menningen

Senator Nathan Manning
1 Capitol Square, Room 039
Columbus, Ohio 43215

Representative Jim Hoops
77 South High Street, 14th Floor
Columbus, Ohio 43215

Co-Chair Manning and Co-Chair Hoops,

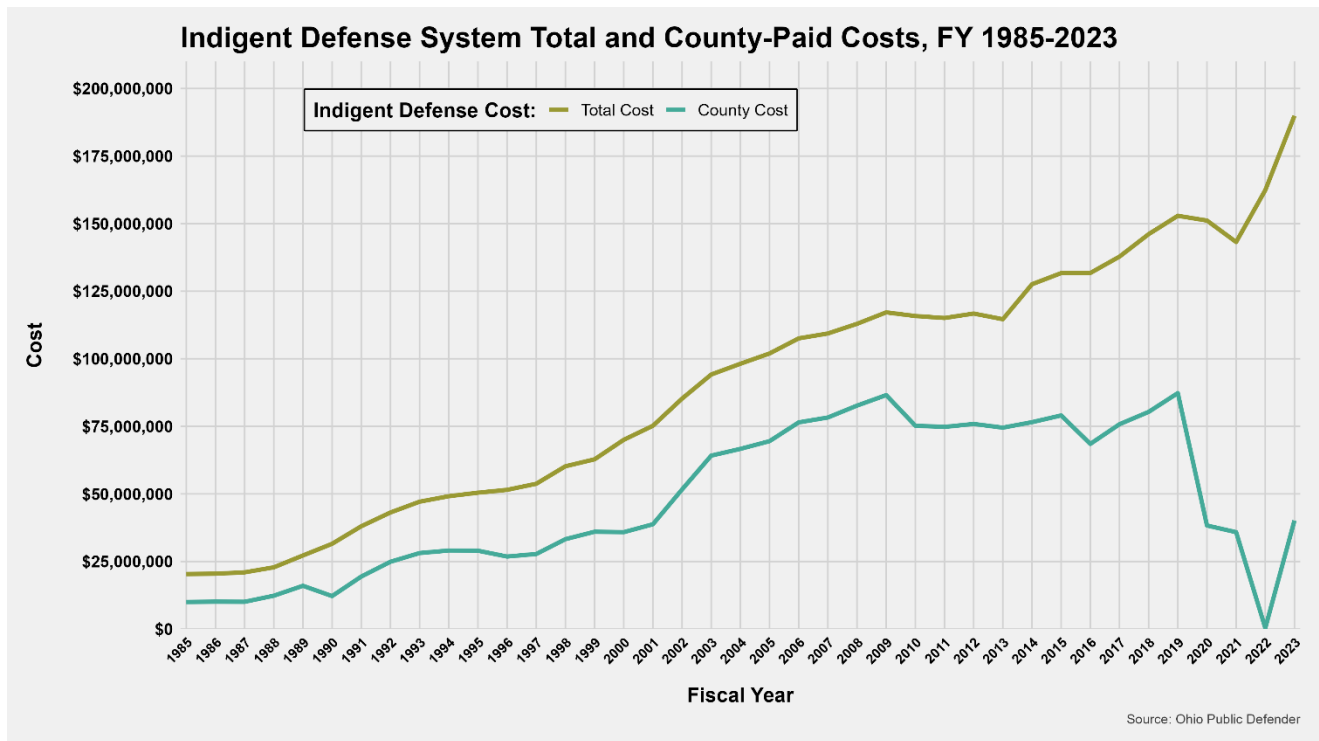
I would like to thank you for your work and leadership on the Task Force to Study Indigent Defense. I enjoyed the opportunity to hear testimony from stakeholders and fellow task force members and I am thankful for the opportunity to submit this letter to you both today. As you heard from my testimony, as well as the testimony from Commissioner Noonan, indigent defense is a very important issue for county commissioners. I would ask that the task force make the following recommendations to the Ohio General Assembly and work collaboratively over the course of the next year and a half to ensure they are properly implemented:

- Fully fund indigent defense;
- Provide in statute that the state is obligated to fully fund indigent defense and explore cost control mechanisms such as a per capita cap on county expenditures;
- Create a state-ran option for counties who wish to have the state administer indigent defense on their behalf, and allow other counties to choose to maintain their local system; and
- Adopt state policy which fosters an increase in the number of attorneys in rural counties.

First and foremost, I believe that fully funding the indigent defense system in Ohio must be the task force's main recommendation. This position was supported through testimony from myself, my fellow commissioner from Allen County, the Ohio State Bar Association (OSBA), Ohio Judicial Conference (OJC), and the 6th Amendment Center. All of these groups stressed the importance of providing not only full funding for the system, but the need for consistent levels of funding for the system. The fluctuation in funding often puts stress on county budgets and negatively impacts counties such as my own, who do their best to control the cost of the system locally.

SERVE • CONNECT • PROTECT

To further illustrate this point, the graph below shows the total system cost and the share paid by counties for each fiscal year since 1985. Until recently, counties bore most of the cost of providing indigent defense. Furthermore, you can see the spikes in funding that are inconsistent from year to year. However, the gap between the two lines in recent years is a testament to the strong partnership that counties have enjoyed with the DeWine-Husted Administration and the 134th and 135th General Assemblies on this issue. Fully funding the indigent defense system in Ohio will result in a high quality of service provided to indigent defendants and provide counties with the financial flexibility to determine the best delivery method at the county level.



The task force heard a considerable amount of testimony regarding the various systems set up at the county level to provide indigent defense services. I strongly believe that county commissioners are best suited to determine which system is suitable for their county on a county-by-county basis. This decision should be made in consultation with local stakeholders such as their judges, prosecutor, county bar association, public defender, etc. While some counties would like the state to take over the operation of indigent defense, some counties, like my county, would like the option to maintain their current county ran system. I believe our current system works well for all parties involved and our county has worked very hard to establish the system, while effectively controlling the costs associated with the system. To illustrate that point, I have included the amount expensed by Fairfield County to the Office of the Public Defender (OPD) since 2014.

Fairfield County Public Defender Expenditures	
Amount Expensed	Year
\$ 1,823,944.57	2014
\$ 1,605,819.87	2015
\$ 1,774,564.47	2016
\$ 1,729,031.35	2017
\$ 1,795,078.54	2018
\$ 1,806,172.85	2019
\$ 1,770,547.21	2020
\$ 1,672,413.78	2021
\$ 1,560,077.73	2022
\$ 1,744,163.41	2023
\$ 17,281,813.78	2014-2023 Total

As you can see, we have been able to control the county's costs associated with indigent defense. We have done so, while increasing our hourly rate for appointed counsel and a fluctuating reimbursement rate from OPD. The testimony that I provided, as well as the testimony provided by Delaware County Public Defender Carlos Crawford, showed that some counties are able to deliver a high-quality service locally while controlling the costs associated with that service.

As mentioned above, counties have some control in terms of how indigent defense is provided locally. However, the option to administer the program locally is largely dependent on a shrinking pool of attorneys in many of the rural counties. Furthermore, the inconsistent reimbursement throughout the years has limited the amount that these attorneys can be paid for this work due to the uncertain dollar amount that will be reimbursed by the state.

As a result of the attorney shortage and uncertain reimbursement mentioned above, many counties are interested in having the state takeover the administration of indigent defense from the county and relieve the county of this obligation. The testimony from Allen County Commissioner Cory Noonan illustrated this point to the committee. In his county, it is increasingly hard to find private attorneys to perform indigent defense services, so the county implemented a county public defender office. While Allen County is satisfied with the level of service provided by the office, it has increased the cost to run the program locally as you can see from the table below. The increase in cost coupled with the fluctuating reimbursement rate from the state has put considerable stress on the county's budget despite the recent increase in overall reimbursement rate.

Allen County Public Defender Expenditures	
Amount Expensed	Year
\$ 780,636	2014
\$ 904,448	2015
\$ 899,495	2016
\$ 804,000	2017
\$ 734,841	2018
\$ 905,574	2019
\$ 947,632	2020
\$ 1,593,994	2021
\$ 1,568,786	2022
\$ 1,602,641	2023
\$ 10,742,047	2014-2023 Total

The differences in the challenges of providing indigent defense in Fairfield County are different than in Allen County. The challenges also result in different financial outlays on behalf of the county and that puts pressure on the amount that the state can reimburse. It is clear from the testimony that some counties are better served by contracting with the state OPD for indigent defense services. This arrangement already takes place in ten counties across the state. The OPD already promulgates rules for indigent defense, provides reimbursement to counties, and sets the recommended reimbursement rate, so it would make sense to expand this option to other counties. If a county chooses to contract with the state for services, there will still be a need for private appointed counsel. In this scenario, the private counsel would submit their bills directly to the OPD and the county would not be involved in the payment process. That being said, we will generally defer to OPD in terms of the onboarding process and functional administration of the state system. It is paramount that counties have the option to choose if they want to keep their current system or contract with the state for services. If the county would wish to keep their system, they would notify OPD and would continue to be reimbursed for the costs associated with indigent defense delivery. These counties should receive 100% reimbursement from the state to ensure parity between both delivery models.

While I appreciate the various viewpoints from all of the witnesses before the committee, there were several proposals that I would not like the task force to recommend. First, it is important that judges retain the ability to select appointed counsel at their discretion. The task force heard testimony that suggested that this process was unfair or inefficient. As a county who relies fully on appointed counsel, I believe that the judges are best suited to make the selection for counsel. In my experience, judges make the appointed counsel based on their past experience with the attorneys and knowledge of the particular facts of the case before them. Judges are uniquely suited to make this determination and that practice should be reflected in the task force's final recommendation.

Last, it was suggested that counties who choose to keep their current system be required to pay a set minimum hourly amount set by the OPD for appointed counsel by the Ohio Association of Criminal Defense Lawyers (OACDL). The amount would be set by hourly rate and capped by case type according to their proposal. I would encourage the task force to reject that recommendation. Fairfield County currently pays below the suggested rate of \$75 by OPD and we have no problem attracting and retaining appointed counsel. We recently raised our appointed counsel rate and that was a thoughtful determination based on a variety of factors. Counties should be left to make that decision on a county-by-county basis and that decision should not be dictated by the state OPD. This issue is especially important if the system is not fully funded by the legislature and in that scenario, the minimum rate would equate to an unfunded mandate on counties.

In conclusion, both myself and CCAO are appreciative of our inclusion in the Task Force to Study Indigent Defense and are eager to work with the rest of the task force to make recommendations to the General Assembly and the Governor's Office on how to improve the indigent defense system. My final recommendation to the task force is that: the indigent defense system should be fully funded, either by statutory requirement, or by fiscal appropriation, potentially explore cost control mechanisms such as a per capita cap on county expenditures, and that counties should be able to choose to keep their current system or contract with the state public defender for services. Please do not hesitate to reach out if you need anything else or have any questions.

Thank you,

A handwritten signature in blue ink, appearing to read "Steven Davis". The signature is fluid and cursive, with a large, prominent "D" at the end.

Commissioner Steven Davis
Fairfield County

March 19, 2024

Indigent Defense Task Force
Co-Chair State Senator Nathan Manning
Co-Chair State Representative Jim Hoops

Dear Co-Chairs Senator Manning and Representative Hoops,

Re: Letter from State Representative Jim Thomas.

Part I. The following are my takeaways from the three task force meetings.

- a. I agree that indigent defense services must be fully and consistently funded by the state, regardless of the delivery model.
- b. I support a statewide system for indigent defense services, where counties have the option of opting in or opting out. State services would be organized by the Office of the Ohio Public Defender (“OPD”) and county services would continue to be organized by individual county governments.
- c. I support the board of county commissioners/county council in each individual county to determine whether their county will opt in to state services or opt-out, and make an affirmative decision (via resolution) to opt in to state services. By default, counties would be considered opt-out counties.
- d. I support for counties that have opted in to state services, that OPD determine the primary delivery method and that OPD would be responsible for delivery of service, including budgeting, employees, setting rates for appointed counsel, and covering the cost of service directly.
- e. I support that the board of county commissioners/county council be required to consult with the local bar, judges, and local public defender commission ahead of passing a resolution to opt in to state services. Similarly, I support that the OPD be required to consult with the local bar, judges, and public defender commission of the respective county prior to a decision to alter the delivery method in an opt-in county.
- f. I agree that if a county elects to opt in to state services, then the county should retain the ability to reverse this decision. The representatives from the Sixth Amendment Center discouraged this. However, perhaps there can be a middle ground. For example, the County would have to prove that the OPD is not providing adequate representation.
- g. I support the Ohio State Bar Association recommendations for the “Opt-Out”/County Services on page 3 of their letter dated November 30, 2023.
- h. I support a change to the OH Revised Code that allows attorneys to work part time in private practice while serving in public defender positions should that be appropriate as determined by the OPD or relevant local authority. This would be similar to the authority of prosecuting attorneys pursuant to R.C. Section 309.06.

- i. I support clarifying the OH R.C. regarding representation in ordinance cases as recommended by the OSBA.

Part II. Next steps that you would like to see the State pursue (studies, funding, delivery structures, etc.).

- a. More discussion of cost containment factors.

Part III. Outstanding questions that you may have regarding the indigent defense system.

- a. Where is the statutory agreement of a 50/50 split of costs between the county and state governments?
- b. Challenges regarding transition from county to state employees? Human Resources?
- c. Is someone currently responsible for setting a floor and ceiling for appointed counsel rates?

Respectfully submitted,
/Jim Thomas/
Jim Thomas
State Representative
District 49

Committees

Ranking Member, Constitutional
Resolutions
Civil Justice
Criminal Justice



Committees:

Financial Institutions
Homeland Security
Pensions
Ohio Indigent Defense Task Force

Ismail Mohamed

State Representative, Ohio House District 3

March 25, 2024

Indigent Defense Task Force Co-Chairs
77 S. High St.
Columbus OH 43215

Re: Indigent Defense Task Force Recommendations

Dear Co-Chairs Manning and Hoops,

I am writing to provide recommendations for the improvement of the indigent defense system in the State of Ohio, drawing upon the insights provided by recent reports and testimonies regarding the current situation. I believe these suggestions can contribute in-part to a more equitable and effective system for all Ohioans. Please review the following points:

1. County Opt-In System:

Based on the findings outlined in the Future of Indigent Defense Task Force's Final Report dated January 23, 2024, it is evident that there exists significant variability in the quality of indigent defense services across different counties in Ohio. While some counties have successfully implemented robust systems that ensure competent representation for indigent defendants, others struggle to meet the minimum standards set forth by the state. Therefore, I see a future with both opt-in and opt-out options being an asset to providing the highest level of indigent defense for Ohioans. By allowing counties to choose whether to participate in the statewide indigent defense program or

maintain their own existing programs ensures that local expertise and tailored solutions are not lost while still offering a standardized framework for those counties that need outside support.

2. Addressing Attorney Shortages in Rural Counties:

As highlighted in numerous testimonies and the Ohio Bar Task Force's Final Report, rural counties face unique challenges in recruiting and retaining qualified attorneys for indigent defense representation. The shortage of attorneys in these areas often leads to inadequate representation and violations of defendants' constitutional rights. To address this issue, I recommend providing additional incentives for attorneys practicing in rural counties. These incentives could include increased pay, loan forgiveness programs specifically targeting attorneys in rural counties, housing assistance, and other benefits aimed at making rural practice more appealing. By enhancing the attractiveness of practicing law in rural areas, we can help alleviate the shortage of attorneys and ensure that all defendants have access to competent legal representation, regardless of location. Furthermore, addressing barriers to travel and overall accessibility to rural counties could be done by further embracing alternative methods of convening for certain proceedings, such as video conferencing or other virtual options.

3. Creating Pre-Law Programs:

As further noted in the Task Force's Final Report, efforts to address the attorney shortage must extend beyond mere incentives for practicing attorneys. It is crucial to cultivate interest in law among students from underserved communities and encourage them to pursue legal education. To this end, I recommend establishing pre-law programs in high schools and other pre-college institutions. These programs could introduce students to various aspects of the legal profession, provide mentorship opportunities with practicing attorneys, and offer guidance on pursuing a career in law. By starting early and fostering an interest in law at the high school level, we can encourage more students to

pursue legal education and ultimately increase the pool of qualified attorneys available to serve indigent clients.

In conclusion, I urge the Indigent Defense Task Force to consider these recommendations as part of its efforts to improve the indigent defense system in Ohio. By improving upon the county opt-in system, addressing attorney shortages in rural counties, and creating pre-law programs, we can work towards a more equitable and effective system that upholds the constitutional right to competent legal representation for all individuals, regardless of their financial means or geographic location.

Thank you for your attention to these important matters. I look forward to seeing positive changes implemented to better serve the indigent population in our state.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ismail Mohamed', written over a horizontal line.

Ismail Mohamed
State Representative
Ohio House District 3

**Testimony provided to the Ohio Indigent Defense
Study Task Force**

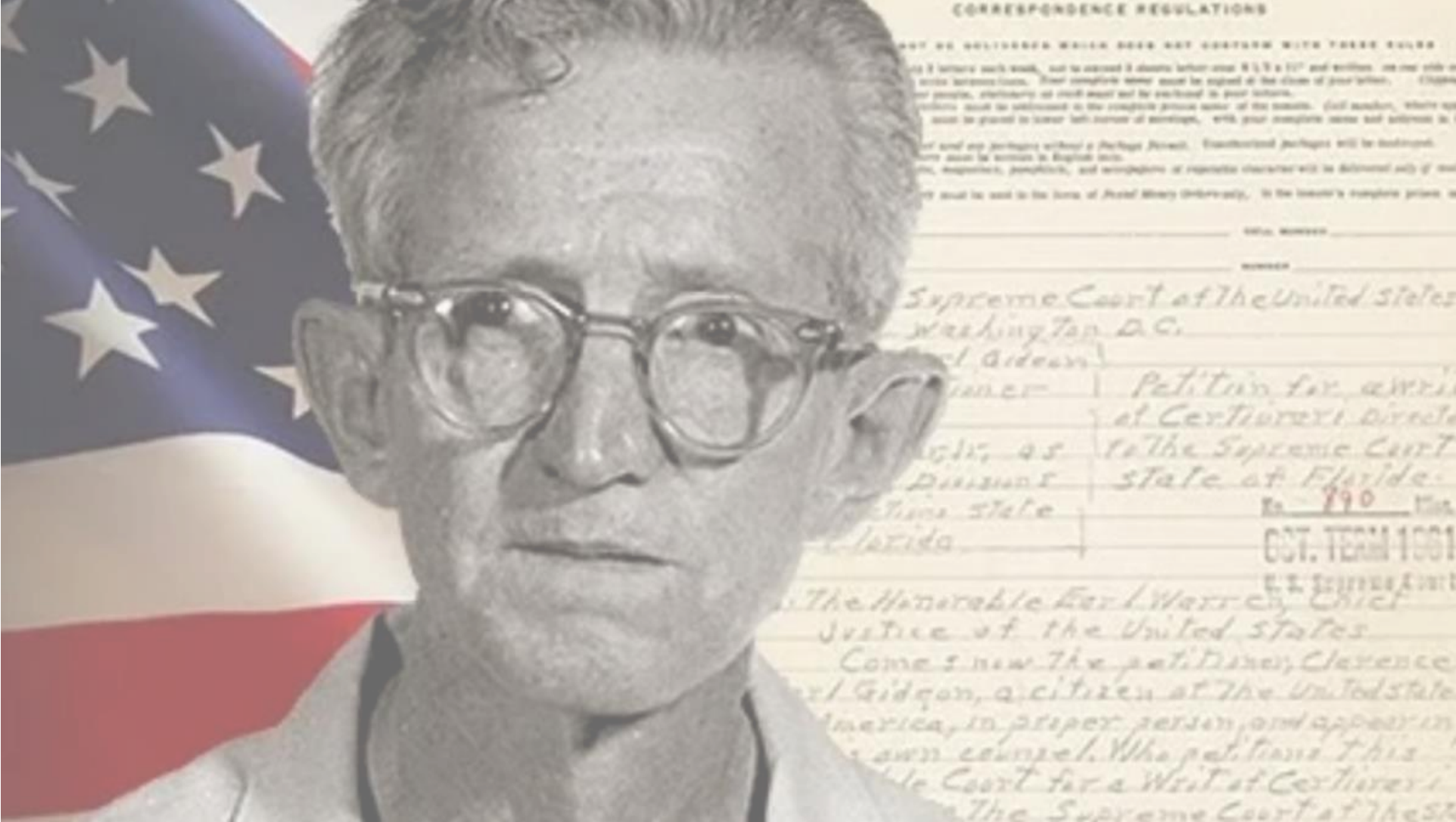


Office of the Ohio Public Defender

INDIGENT DEFENSE STUDY TASK FORCE

January 25, 2024

RIGHT TO COUNSEL



OHIO'S CURRENT INDIGENT DEFENSE SYSTEM



- 31** ■ County Public Defender; Court Appointed Counsel
- 39** ■ Court Appointed Counsel
- 7** ■ Contract with Non-Profit; Court Appointed Counsel
- 10** ■ Contract with State Public Defender; Court Appointed Counsel
- 1** ■ County Public Defender; Contract with Non-Profit; Court Appointed Counsel

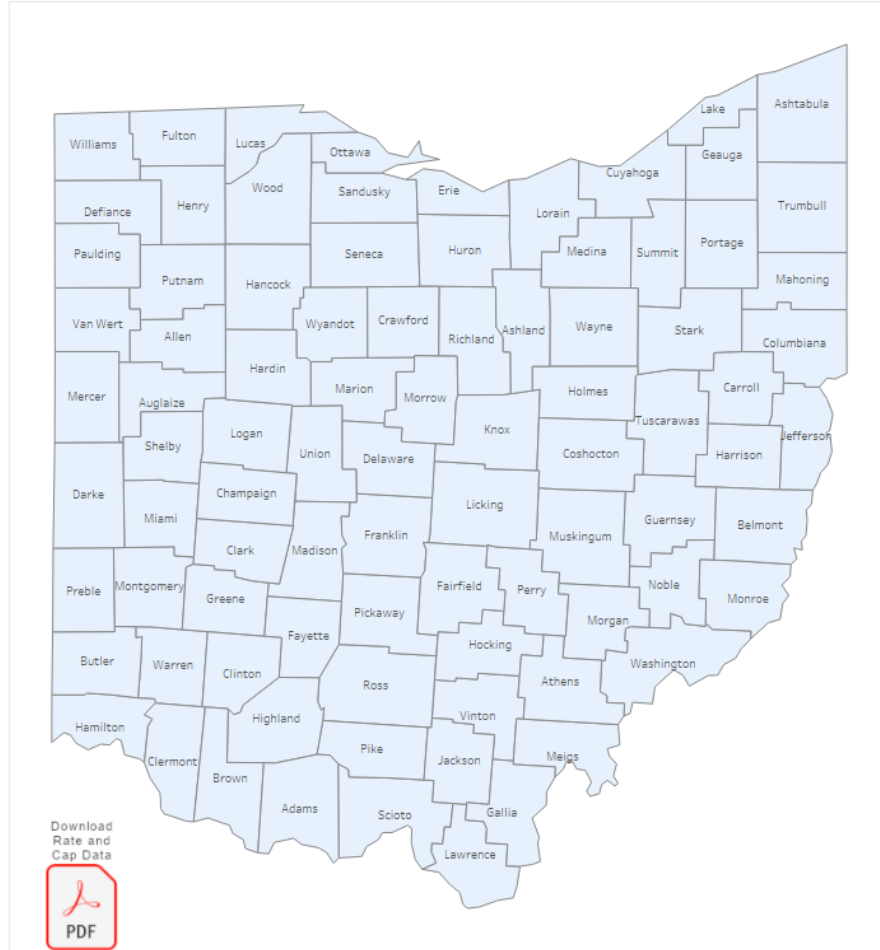
WHO DECIDES WHICH METHOD(S) OF INDIGENT DEFENSE TO USE?



In Ohio, each County Commission has the authority to choose the method(s) by which indigent defense representation is provided in their county.

COUNTY SETS COURT-APPOINTED COUNSEL RATES & CAPS

County Rates and Maximum Fees



County: In Court: Out of Court:
 Court:
 Rate Rev.: Cap Rev.:

Trial	Aggravated Felonies in the First, Second or Third Degree	65	65	1/1/2023	\$2,500	1/1/2020
	Aggravated Murder without Specifications (1 Atty)	65	65	1/1/2023	\$7,500	1/1/2020
	Aggravated Murder without Specifications (2 Attys)	65	65	1/1/2023	\$10,000	1/1/2020
	All Other Offenses or Proceedings not classified elsewhere	65	65	1/1/2023	\$625	1/1/2020
	Contempt of Court	65	65	1/1/2023	\$250	1/1/2020
	Felony in the Fifth Degree	65	65	1/1/2023	\$1,875	1/1/2020
	Felony in the First Degree	65	65	1/1/2023	\$2,500	1/1/2020
	Felony in the Fourth Degree	65	65	1/1/2023	\$1,875	1/1/2020
	Felony in the Second Degree	65	65	1/1/2023	\$2,500	1/1/2020
	Felony in the Third Degree	65	65	1/1/2023	\$2,500	1/1/2020
	Habeas Corpus with Evidentiary Hearing	65	65	1/1/2023	\$1,250	1/1/2020
	Habeas Corpus without Evidentiary Hearing	65	65	1/1/2023	\$625	1/1/2020
	Misdemeanor in the First Degree	65	65	1/1/2023	\$937.50	1/1/2020
	Misdemeanor in the Fourth Degree	65	65	1/1/2023	\$937.50	1/1/2020
	Misdemeanor in the Second Degree	65	65	1/1/2023	\$937.50	1/1/2020
	Misdemeanor in the Third Degree	65	65	1/1/2023	\$937.50	1/1/2020
	Murder	65	65	1/1/2023	\$3,750	1/1/2020
	Post-Conviction Proceeding with Evidentiary Hearing	65	65	1/1/2023	\$1,250	1/1/2020
	Post-Conviction Proceeding without Evidentiary Hearing	65	65	1/1/2023	\$625	1/1/2020
	Probation and Parole Violations	65	65	1/1/2023	\$625	1/1/2020

Office of the Ohio Public Defender (OPD)

OPD provides representation on appeals and post-conviction for death penalty, criminal, and juvenile delinquency cases, at parole revocation hearings, and at trial as requested by local courts or for contract counties.

(1) County Public Defender Office

Offices are run by a director and overseen by a Public Defender Commission appointed by the county's Common Pleas Court and the Board of Commissioners.

Counties pay for services up-front and then submit monthly reports to OPD detailing operational costs and caseloads. OPD provides reimbursement using available funds.

(2) Court Appointed Counsel

Individual courts are responsible for appointing attorneys to represent indigent defendants.

For reimbursement, the court approves individual bills for services provided. The auditor pays the bills and submits them to OPD monthly. OPD provides reimbursement using available funds.

(3) Contract w/ Non-Profit Corporation

Indigent defense services are overseen by a non-profit corporation who contracts with the county to provide a specified type and amount of service.

Counties pay for services up-front and then submit monthly reports to OPD detailing operational costs and caseloads. OPD provides reimbursement using available funds.

(4) Contract w/ Ohio Public Defender

Indigent defense services are provided directly by the State of Ohio through a contract with OPD, who then has oversight of staffing, budget, and service provision.

OPD's fiscal office bills the county the portion of the contract price that was not covered by reimbursement.

(5) Joint County Public Defender

Offices are run by a director and overseen by a Public Defender Commission appointed by the county's Common Pleas Court and the Board of Commissioners.

**** NOTE ****
THIS OPTION IS NOT USED IN ANY OHIO COUNTIES

HOW IS INDIGENT DEFENSE FUNDED?



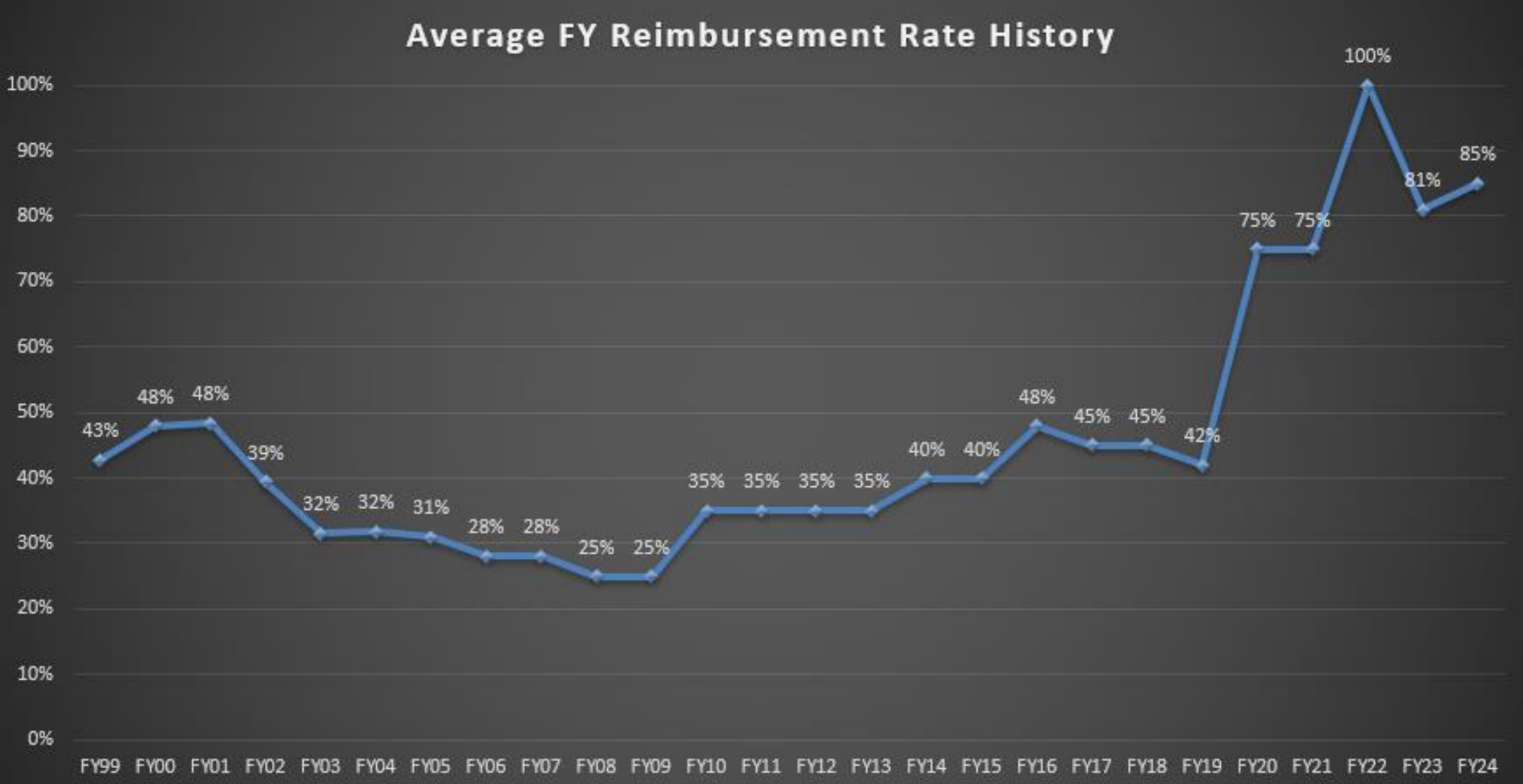
In Ohio, each county is responsible for the costs of indigent defense representation provided in their jurisdiction. After paying those costs, counties submit their costs to the Office of the Ohio Public Defender for reimbursement.

HOW IS THE REIMBURSEMENT RATE DETERMINED?



Once all indigent defense costs from Ohio's 88 counties have been submitted for a given month, OPD compares the amount submitted for reimbursement and the funding available to provide reimbursement. The result of that comparison determines the reimbursement rate provided (in equal percentages) to every county.

WHAT HAS THE REIMBURSEMENT RATE BEEN HISTORICALLY?



HOW IS INDIGENT DEFENSE FUNDED AT THE STATE LEVEL?

A SNAPSHOT: OPD'S BUDGET HAS *THREE* COMPONENTS

OPERATING BUDGET

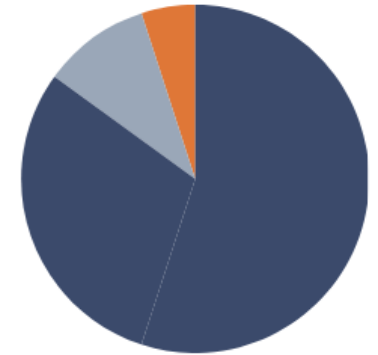
This budget supports the day-to-day operating expenses of the State Public Defender Office and is primarily used to employ staff to help meet statutory duties as prescribed in R.C. 120—among which is oversight and administration of the reimbursement funds. This includes operations at our central office in Columbus, and operations in the county offices.

REIMBURSEMENT BUDGET

This budget provides reimbursement to Ohio's 88 counties for the county-level costs of indigent defense. These funds are not available for OPD's operational budget.

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.



RECENT REIMBURSEMENT OVERVIEW

Reimbursement Overview	FY20	FY21	FY22	FY23
Annual Approved Submissions	\$150,475,274	\$142,745,863	\$162,031,862	\$189,909,016
Average Monthly Submissions	\$12.5 mil	\$11.9 mil	\$13.5 mil	\$15.8 mil
Annual Paid Submissions	\$112,821,981	\$107,345,830	\$162,031,862	\$149,730,778
Annual Average Reimbursement Rate	75%	75%	100%	79%

Overall, the indigent defense costs, and therefore the reimbursement requests, from Ohio's 88 counties have continued to increase.

WHERE ARE WE WITH REIMBURSEMENT TODAY?

REIMBURSEMENT BUDGET	FY24
Amount Appropriated	\$180,827,623
Monthly Submission/Rate Scenario	\$16mil = 94% (\$192mil total)
Monthly Submission/Rate Scenario	\$17mil = 89% (\$204mil total)
Monthly Submission/Rate Scenario	\$18mil = 84% (\$216mil total)
Monthly Submission/Rate Scenario	\$19mil = 79% (\$228mil total)
Monthly Submission/Rate Scenario	\$20mil = 75% (\$240mil total)

FY24 MONTH	SUBMITTED	RATE
MAY	\$17.5MIL	85%
JUNE	\$18.5MIL	85%
JULY	\$16.2MIL	85%
AUGUST	\$17.1MIL	85%
SEPTEMBER	\$17.2MIL	85%
AVERAGE	\$17.3MIL	85%



MIKE DEWINE
GOVERNOR OF OHIO



Thank You...

**Office of the Ohio
Public Defender**

Advocating. Fighting. Helping.



THE OHIO LEGISLATURE

QUESTIONS/NEED ASSISTANCE?

www.opd.ohio.gov



**Office of the Ohio
Public Defender**

Advocating. Fighting. Helping.

Elizabeth R. Miller
State Public Defender

250 E. Broad St., Suite 1400
Columbus, OH 43215
614.466.5394 | 800.686.1573
TTY 800.750.0750

elizabeth.miller@opd.ohio.gov
opd.ohio.gov

The Future of Indigent Defense Task Force



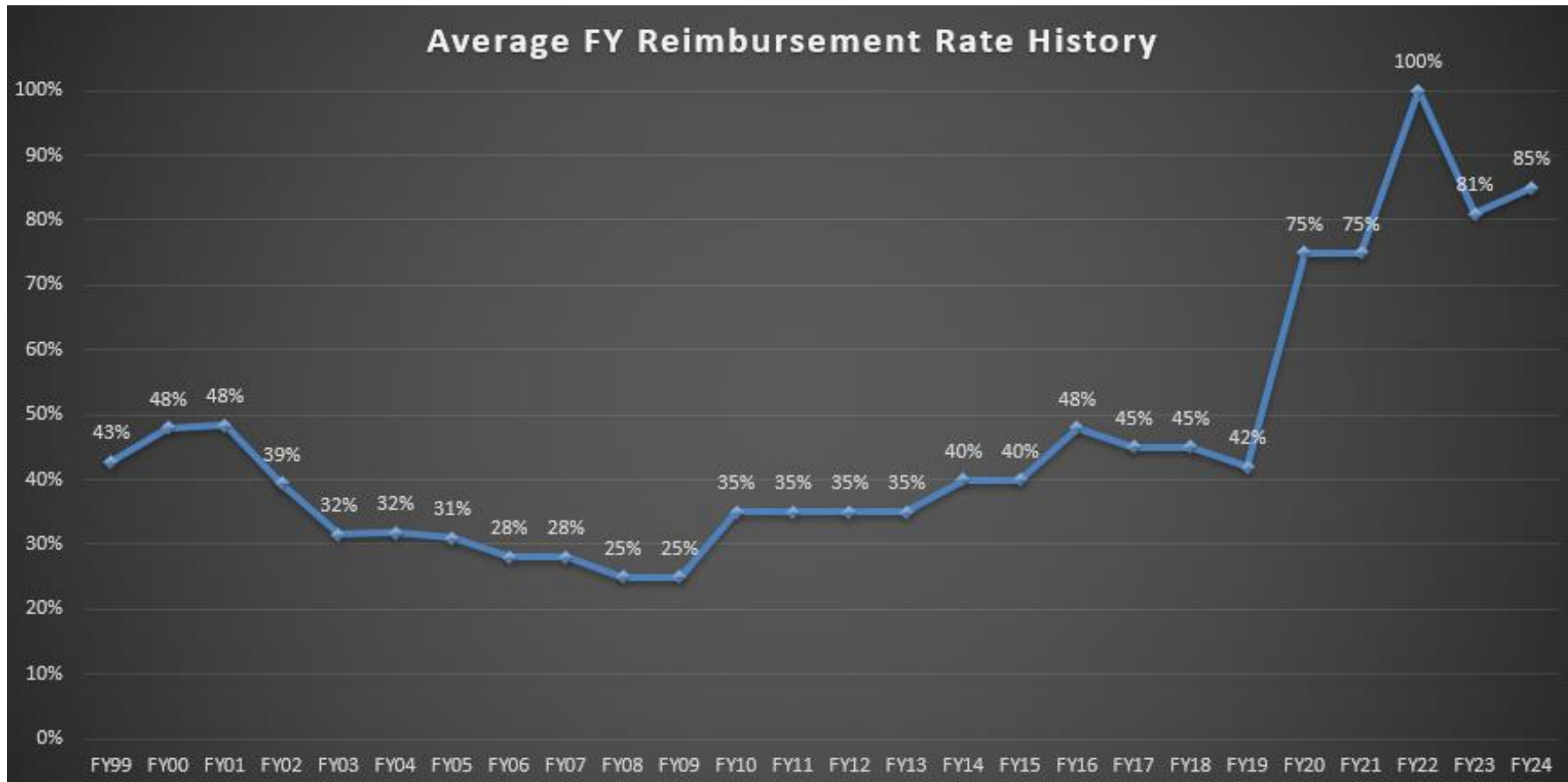
Indigent Defense Task Force

TASK FORCE MEMBERSHIP

- Ohio State Bar Association
- Ohio Public Defender
- County Commissioners Association of Ohio
- Ohio Prosecuting Attorneys Association
- Ohio Association of Criminal Defense Lawyers
- Ohio Judicial Conference
- county public defenders
- appointed counsel
- Akron Bar Association
- Ohio Access to Justice Foundation

Overall System Recommendations

- The Task Force acknowledges that indigent defense services must be fully and consistently funded by the state, regardless of the delivery model in the state.



Overall System Recommendations

- The Task Force recommends a statewide system for indigent defense services, where counties have the option of opting in or opting out.
- The Task Force recommends the board of county commissioners/county council in each individual county determine whether their county will opt in to state services or opt out and, in that case, provide their own method of delivery at the county level.
- The Task Force recommends the board of county commissioners/county council make an affirmative decision, via resolution, to opt in to state services.

Outlook of the Task Force



RECOMMENDATION FOR AN OPT IN
(STATE)/OPT OUT (COUNTY) SYSTEM

Opt In (State)

- OPD determines delivery method
- OPD is responsible for operation (i.e. budgeting, employees, office equipment, etc.)
- State pays directly
- State sets rates and caps

Opt Out (County)

- Individual county determines delivery method
- County is responsible for operation (i.e. budgeting, employees/contracts, etc.)
- State reimburses the county
- County sets rates and caps

Opt In

- For counties that have opted in to state services, the Task Force recommends the OPD determine the primary delivery method and that OPD is responsible for delivery of service, including budgeting, employees, setting rates for appointed counsel, etc.
- The Task Force recommends the board of county commissioners/county council be required to consult with the local bar, judges, and local public defender commission (if applicable) ahead of passing a resolution to opt in to state services.
- Similarly, the Task Force recommends the OPD be required to consult with the local bar, judges, and public defender commission (if applicable) of the respective county ahead of a decision to alter the delivery method in an opt-in county.

What happens if a county changes their mind?

- If a county elects to opt in to state services but later wishes to reverse this decision, the Task Force recommends the board of county commissioners/county council provide a minimum of three years' notice to the OPD.
 - If a county elects to reverse their decision to opt in to state services within five years, they are required to repay the startup costs to the state at a rate of 20 percent of the startup costs for each year of the first five years remaining since opting in.
 - These costs shall include all furniture, phones, IT equipment, copiers, and any other necessary equipment as part of the initial start of services. Costs shall also include any amount due and owing for layoffs pursuant to employment laws, any costs for lease termination, and moving costs to remove any and all equipment and materials from a facility.

Opt Out

- For counties that opt out of state services, the Task Force recommends the board of county commissioners/county council determine the delivery method for their respective county and the county will be responsible for all support services and related activities, including budgeting, employees, settings rates for appointed counsel, etc.
- The Task Force recommends open lines of communication between the OPD and an opt-out county for budgeting purposes.

To incorporate opt-out counties into the state budget process, the Task Force recommends the following process:

1. OPD provides budget guidance (provided to OPD by the Ohio Office of Budget and Management) to all opt-out counties in July of the year preceding the state budget approval process (all even-numbered years).
2. Counties must submit their indigent defense budget to OPD in September of the same year. The indigent defense budget must be formatted from July to June and include two fiscal years (to coincide with the state's biennial budget).
3. OPD will submit the proposed opt-out county budgets to the state. OPD will offer guidance, rather than approval, to counties in developing their indigent defense budgets.

Additional Considerations

Availability of Appointed Counsel

- The Task Force recommends the OPD set a floor and ceiling for appointed counsel rates.
 - The Task Force maintains that judges must continue to play a significant role in selecting appointed counsel.
 - The Task Force encourages the OPD to maintain and update appointed counsel resources on their website.

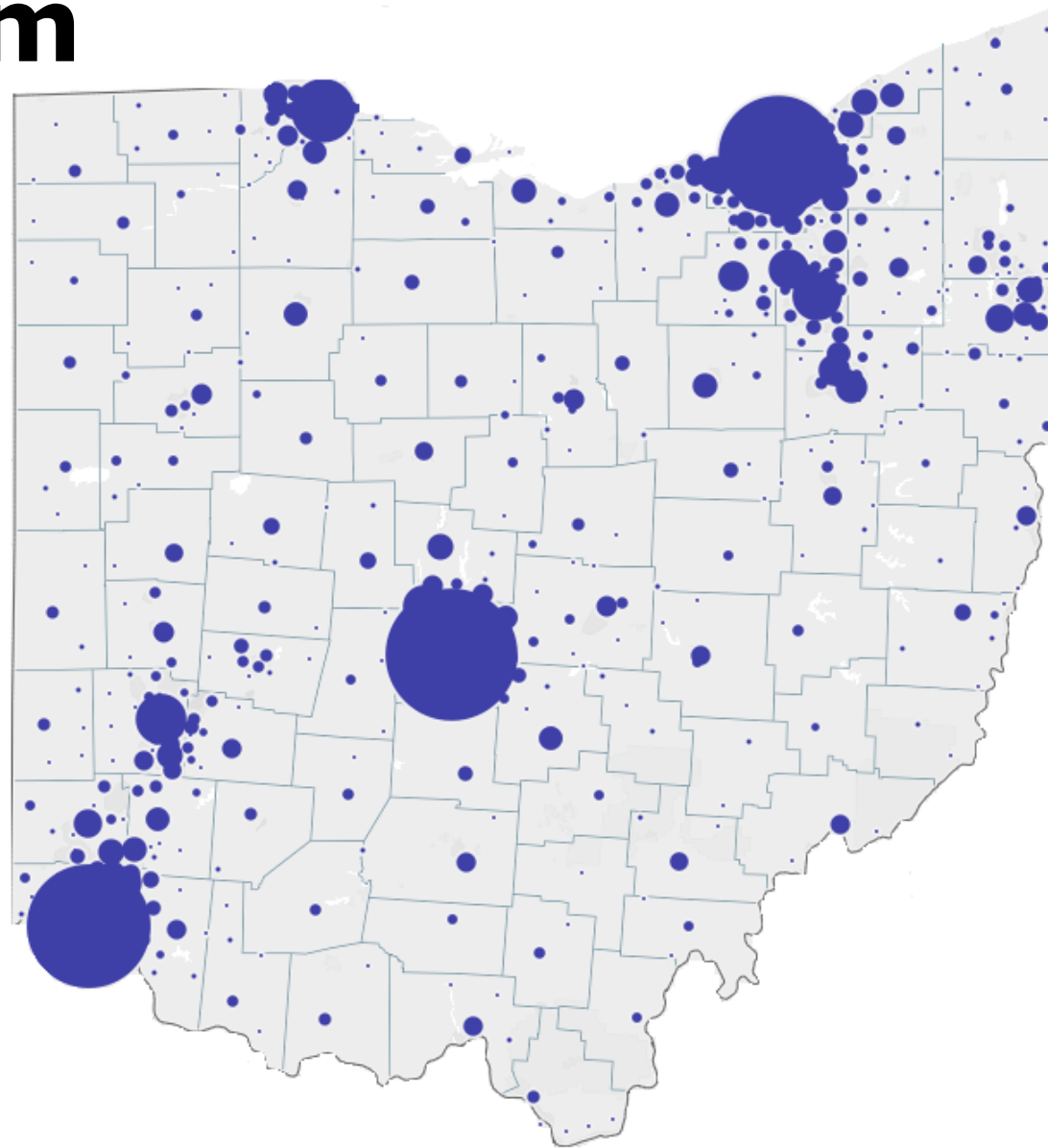
Additional Considerations

Combatting Attorney Shortages

- The Task Force recommends the General Assembly consider programs or incentives to ensure there are adequate numbers of prosecutors, public defenders, and appointed counsel in all areas of the state.
 - The Task Force encourages adjustments to the Ohio Revised Code that allow attorneys to work part time in private practice while serving in public defender positions, either at the county level or state level, should that be appropriate as determined by the OPD or relevant local authority.

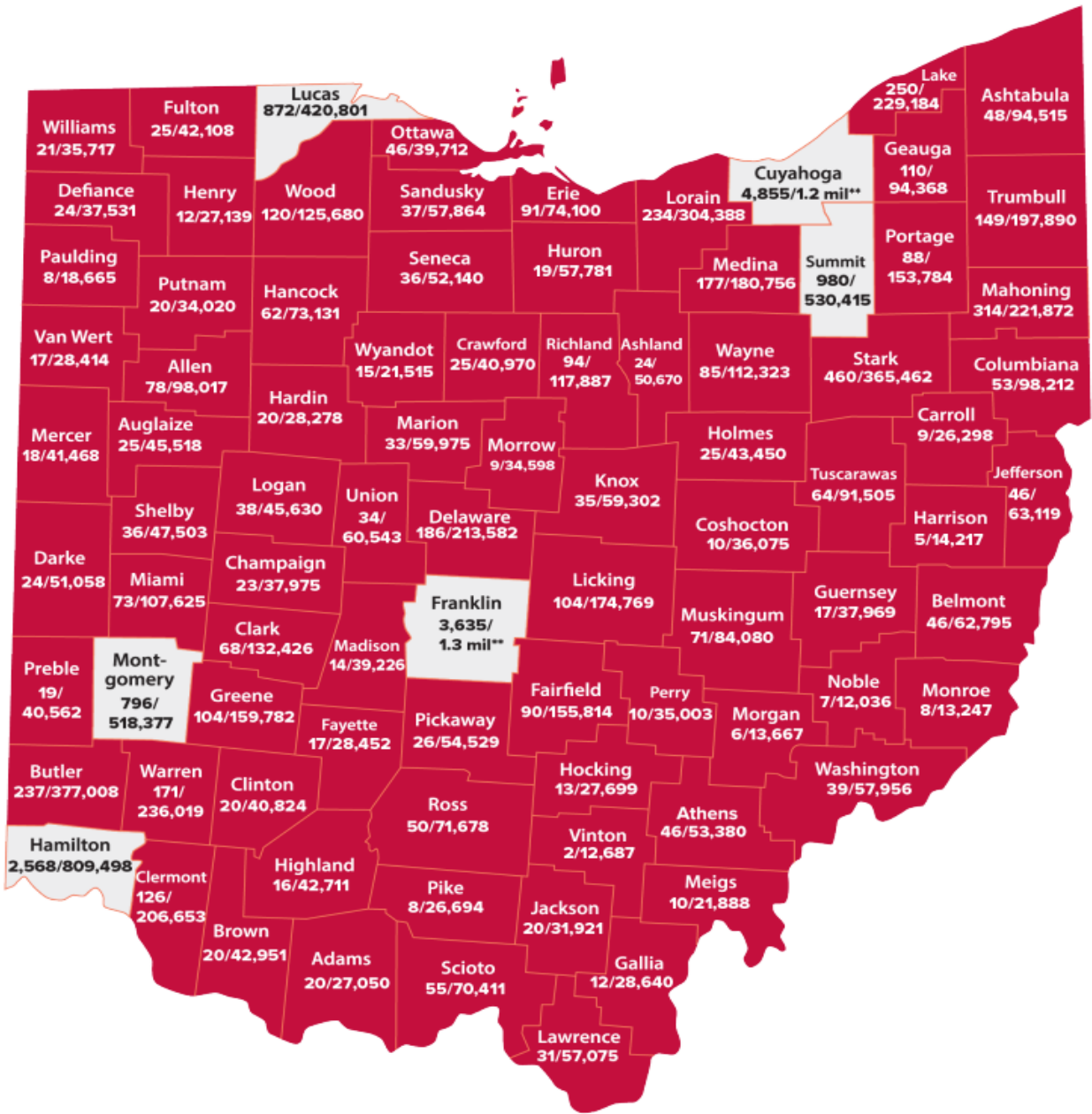
The Problem

18,664
private practicing attorneys



11,472,644
Ohioans

The Problem



Additional Considerations

Representation in Ordinance Cases

- The Task Force recommends that the reimbursement protocol for representation in municipal ordinance cases where an individual is legally entitled to counsel be clarified in the Ohio Revised Code, and further recommends that representation in ordinance cases be provided by either the state or county, as appropriate, given the overall delivery model.

Additional Considerations

Cost Containment and Funding

- The Task Force recommends the General Assembly review both cost-containment factors and funding needs of the system.

Additional Policy Decisions

- Transition from county to state
- Funding and resources
- Quality assurances

I appreciate the opportunity to be here today.

First, I want to express gratitude to the legislature and Governor DeWine for your leadership regarding funding for indigent defense services in the State of Ohio. Specifically, for the increased funding levels provided in the previous Biennial Budget and for the funding and dialogue taking place during this current Biennium.

My name is Cory Noonan. I am in my 12th year as Allen County Commissioner. Thinking back to the beginning of my tenure, I can recall some of the top items on my to-do list: working with our elected officials, maintaining a balanced county budget, economic development and many others. Of the many other items that I did not appreciate as a Commissioner's responsibility was providing indigent defense.

Since that time, Allen County has gone from court-appointed counsel delivery method to a county public defender office. This change took full effect in 2021. The primary reason for this change was due to the lack of attorneys and the large number of cases. The lack of attorneys had a compounding effect on Allen County as it prolonged nights in our county hotel...the county jail, thus costing the taxpayers for their extended stay.

Forming the Allen County Public Defender's Office has assisted greatly in resolving these issues. We now are able to hire attorneys (the number prescribed by the Ohio Administrative Code, per caseload) which has been more accommodating to the inmates and their lengths of stay in the county hotel.

This undoubtedly has come with a cost to the citizens of Allen County and the State of Ohio. The Allen County Public Defender Office now has overhead, expenses not experienced prior. Office space, administrative oversight and professional services are now needed within this office. Services replicated, I'm sure, throughout Ohio costing taxpayers' money.

In Allen County, we must continue to retain court-appointed counsel for conflict cases. In most situations where an individual is in need of a public defender, they were not the only one involved...thus court-appointed counsel must be appointed for one or more of the individuals accused of a crime.

You may ask, what does it cost to provide this service in Allen County? In 2013, my first year as Allen County Commissioner, the amount spent in Allen County for indigent defense was \$762,118. In 2023, the amount to provide indigent defense services totaled \$1,654,214.

We have a great Public Defender Office in Allen County. Great attorneys and staff. Undoubtedly there is a struggle, like throughout the state, to find and retain attorneys. But they are doing a good job! The question I, as Allen County Commissioner, who is responsible for Allen County's finances and funding county mandated offices such as the Sheriff, Prosecutor, Treasurer, Auditor, Judges and jail to name a few, is why does the onus of providing indigent individuals with legal representation fall on the county as a financial responsibility?

As Mr. David Carroll, Executive Director of the Sixth Amendment Center explained during his August 2022 presentation on the National Perspective on Public Defense:

Sixth Amendment provides... "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

How is the 14th Amendment connected to the 6th Amendment?

Mr. Carroll further explains, “In the *Gideon v. Wainwright* decision in 1963, the United States Supreme Court held that the Sixth Amendment right to counsel is incorporated into the Fourteenth Amendment and is therefore binding on both Federal and State courts.

States are required by the 14th Amendment to ensure that the obligations under the 6th Amendment are properly implemented. That is although a state may pass on its obligation to provide effective representation to local government, all states-including Ohio-must ensure that counties are capable of providing effective representation and, importantly, that they are providing effective representation.”

Through the Ohio Administrative Code,

Rule 120-1-06: Facilities for a county or joint county public defender office (Attached)

The supporting staff, facilities, equipment, supplies, and other requirements needed to maintain and operate an office of a county or joint county public defender shall be sufficient to allow quality representation and shall be substantially equivalent to that provided for the county prosecutor's office.

This section explains the salaries, office space, and what the budget for the county public defender must provide for.

Rule 120-1-07: Workload Standards (Attached)

- (A) Neither a public defender nor a court-appointed counsel may accept a workload that threatens to deny due process of law or constitutional rights to any client, places the office or attorney in imminent danger of violating the Ohio Rules of Professional Conduct, or otherwise threatens quality representation of the client.
- (B) An attorney who works as a public defender or court-appointed counsel on a full-time basis should not be assigned or

accept an annual caseload in excess of the national advisory commission (NAC) on criminal justice standards.

This section explains the restrictions to the number of cases to be assigned.

Since a year before I was born, the State has required that indigent defense services and associated costs shall be the responsibility of the county. Again, on behalf of my fellow County Commissioners, we appreciate the recent actions by the Legislature and Governor DeWine. While these actions are greatly appreciated, indigent defense services and the requirements by the State are costly to our counties. We are designating county funding to this state requirement that should be used for our county operations.

I am going to reference the September 1, 1992 Report of the Supreme Court Task Force to Study Court Costs and Indigent Defense during the remainder of my testimony. I believe it is important to understand the issues this Task Force looked at over 30 years ago and their thoughts and recommendations.

On the first page of its findings, a brief history is outlined that explains that in 1976, the General Assembly established a unique system for providing representation to persons accused of criminal conduct who could not afford to retain legal counsel. The system allows each county to develop, independently or in concert with other counties, a program for delivery. This is provided that the program satisfies rules promulgated by the Ohio Public Defender Commission.

Undoubtedly, this draws the question as to efficiencies with such a variety of delivery methods and duplicative services by each county throughout the State.

The findings continue with explaining that while the current system of providing representation to indigent criminal defendants is a model of

state and county governments sharing responsibility for delivering an essential service, (events at the time of the study) prompted a review of whether this mixed system continues to be the most cost-effective and efficient means of delivering quality indigent defense services.

The 1992 Task Force expressed:

“We have concluded the present system is neither efficient nor cost-effective in many areas throughout Ohio. This is attributable partially to the many pressures facing county officials in preparing service delivery plans and the limited authority given to the Ohio Public Defender Commission to regulate these plans.”

Again, we have a great Public Defenders Office in Allen County. Great individuals providing legal services for indigent individuals in Allen County...I am sure, similar to what is being provided in other counties. As was explained in the 1992 report, we have each county with their own delivery method, providing similar services at differing costs. What affect does this have on indigent defense delivery in Ohio?

Multiple delivery methods cause strain on funding/reimbursement from the State.

- County Public Defender Office
- Court-appointed Counsel
- Contract with the State Public Defender
- Contract with a Nonprofit Corporation
- Combination of a County Public Defender and contract with a Nonprofit Corporation

Multiple office structures and duplicative services cause strain on funding/reimbursement from the state.

- Each county has an administrative cost. Whether it is the administrative side at the county public defender office,

administrative need to oversee the reimbursement from the State by the County Common Pleas Courts and the County Auditors Offices.

- Number of attorneys. Do counties have enough attorneys to staff their offices or assign for court appointed counsel? Or is the staffing correct to the number mandated by the Ohio Administrative Code?
- Does a County hire an investigator or other professionals?

I believe efficiencies and cost savings could be achieved through the State accepting the responsibility of indigent defense service.

Our association has been discussing a two-pronged system where counties can choose to continue to administer indigent services at the county level or have the State Public Defender assume the responsibility. I believe that if the state assumes this responsibility, regional offices could be assembled with local attorneys continuing to provide the great services expected. Less overhead and administrative expenses. Attorneys, investigators and other professionals able to assist those needing representation.

I have been fortunate to participate in the Ohio Bar Association's Future of Indigent Defense Task Force. The goal of the Task Force, just like this Task Force and us as County Commissioners is to ensure that Ohio citizens are able to access their right to the assistance of counsel guaranteed by the Constitution.

The Future of Indigent Defense Task Force has provided their recommendations that are similar to the County Commissioners Association of Ohio (CCAO). On page 2 of their recommendations, first and foremost it is stated that "the Task Force acknowledges that indigent defense services must be fully and consistently funded by the state, regardless of the delivery model of the State." The legislature and Governor DeWine have made strides to accomplish this goal...matter of fact, the legislature and Governor DeWine are close to the 1992

recommendation, on page 16 the Task Force understands the State's responsibility when it recommended:

“The State should reestablish its commitment to fund a minimum of fifty percent of indigent defense cost and gradually increase its share of funding until indigent defense is fully funded by the state.” The report further states: “However, the state should make a firm commitment to gradually assume the responsibility for funding all expenses associated with providing representation of indigent defendants.” This was expressed in 1992.

Both The Future of Indigent Defense Task Force and the CCAO have similar recommendations which include a statewide system for indigent defense services by either opting in or opting out. State services provided by the Office of the Ohio Public Defender and county services organized by individual county governments with their authority to determine the delivery method of service.

Speaking for Cory Noonan, Allen County Commissioner, I would suggest that rather than opting in or opting out, I believe the state should provide the service through the Office of the Ohio Public Defender and those counties who choose maintain county services for indigent defense provide a resolution that they choose to opt out of the state system.

Each of our 88 counties would have the opportunity to decide and pass a resolution, to determine if their county would opt out of the state service. If the legislature so chooses to proceed, the CCAO would work with our membership to identify those counties who may choose to opt out. While this would be a decision made by the Board of County Commissioners, there should be conversations at the local level before such decision is made.

It would be my recommendation that the statewide system take the form of regional offices under the direction of the Office of the Ohio Public Defender. The Future of Indigent Defense Task Force explains, under the

state system, “the Office of the Ohio Public Defender will be responsible for delivery of indigent defense, support services, employee management, budgeting and administrative duties.”

As I discussed this topic with Allen County’s Common Pleas Judges, their concern was maintaining their input and recommendations regarding assigned counsel within their courtrooms. I would encourage maintaining similar role for the Judges as it relates to assigned counsel.

Thank you again for the opportunity to be here today and offer testimony. Undoubtedly, we are here to ensure that Ohio citizens are able to access their right to the assistance of counsel guaranteed by the Constitution. But just as it was reviewed in 1992 and now 2024, how can we best achieve this goal in a manner that is in the best interest for the tax payers of the Great State of Ohio.

Ohio Indigent Defense Task Force
Sixth Amendment Center testimony by David Carroll & Aditi Goel
Columbus, Ohio – February 29, 2024

Good Morning. I am Aditi Goel, Deputy Director of the Sixth Amendment Center. Joining me today is 6AC Executive Director and Founder, David Carroll. Thank you for the opportunity to talk about the Ohio State Bar Association Task Force proposal. First, a little bit about who we are and what we do.

6AC is a non-profit organization that assists federal, state, and local policymakers meet their constitutional obligation to provide effective public defense services. We do so by sharing objective information and a national perspective with policymakers on what works and does not work. We trust that when policymakers are armed with good information, the legislative process will result in constitutional services that meet the unique needs of a jurisdiction.

6AC was founded on and operates on three principles:

1. We are non-partisan. The right to counsel is a core American value that pre-dates the founding of our country and is neither a conservative nor liberal principle. There are just as many public defense issues in blue states as red states, and 6AC helps all policymakers regardless of party affiliation. Our board members span all sides of the political spectrum, and we get as much funding from conservative philanthropies (Stand Together – the Koch network) as we do from progressive philanthropies (Public Welfare).
2. We do not go anywhere we're not invited to. We do not presume to know the strengths and weaknesses of a system until we listen to and learn from local stakeholders. We have a lot of lessons learned from other states that you may find helpful, but it is not our place to impose our will over the collective decision-making authority of elected officials.
3. We do not litigate or lobby. We do not get involved with class action lawsuits or involve ourselves in individual cases. We do not want policymakers fearing that if they invite us into their state, then we will turn around and sue the state based on information we discover while working in their direction. In short, we want to help.

6AC is analogous to a property inspector assessing an old house that policymakers have inherited. When asked, we closely examine everything that may slowly and insidiously be damaging the house: poor wiring, cracks in the foundation, unhealthy mold behind walls. Although today's policymakers are not responsible for the deficient condition of their old inherited house, they are responsible for any issues deriving from those damages once they have the inspection report. They can choose to invest in renovations. They can choose to demolish and build anew. But if they choose to ignore the problems, the house will only continue to deteriorate. In pointing out public defense deficiencies to policymakers, 6AC's goal is to help policymakers decide how best to ensure renovations or rebuilds are structurally sound and meet required laws and standards.

Ohio policymakers have not requested a public defense inspection report, so 6AC has not studied public defense in Ohio. To be fully transparent, before founding 6AC, David assessed the Hamilton County Public Defender on behalf of the National Legal Aid & Defender Association. But we do not presume that the problems uncovered in one county are representative of all Ohio counties today.

So, our comments today are based solely on our reading of Ohio statutes, court rules and policies, and our national experience in other states. Finally, I want to make clear that our appearance today was underwritten by our non-partisan funders. We did not accept any funds from any person or entity in Ohio. Our opinions are ours, and ours alone.

With that background, let's get down to our assessment of Ohio's public defense system and the recommendations of the state bar association's task force.

State vs. county competing interests

Under U.S. Supreme Court case law, ensuring the constitutional right to counsel is a state obligation under the Sixth and 14th Amendments. In Ohio, however, local counties are responsible at the outset to fund and administer services. Although a state may delegate its constitutional responsibilities to counties, the state must guarantee that counties can, and in fact do, provide adequate representation to every indigent defendant in the state. Ohio does not have a state agency authorized or funded to fulfill this obligation.

OPD certainly provides oversight of those counties that transferred administration of county trial-level services to the state. But this is small number of counties, and even in those counties, there may be limited oversight of counsel appointed by the court. The State of Ohio is falling short on its 14th Amendment obligation in remaining services in the rest of the state. In fact, Ohio is currently in the minority of states where the state is primarily funding public defense while having limited oversight of the services that are being locally provided.

From our work in other states, we understand the concerns of county policymakers regarding public defense. If the state is going to offload its constitutional obligations to counties, counties want two things: **local control** and **financial certainty**.

Let's begin with **local control**. When the U.S. Supreme Court made ensuring the right to counsel a state obligation, it did not say *how* states must provide public defense services. Instead, each state, serving as a "laboratory of democracy," is free to experiment with its own ideas.

Many states have taken a top-down approach to public defense in which one single statewide, state-funded system administers and oversees all public defense services, relieving local government of both funding and managing public defense services. And many of these are seen as operating very good public defense systems, like Colorado and Massachusetts.

However, we have seen how the benefits of "laboratories of democracy" can extend beyond the 50 states and into counties as well. We have spoken with county managers and commissioners

across the country, and it is a widespread held belief that county policymakers understand the needs of their local uniqueness better than the state. Every county has its own geographic challenges, population diversity, and criminal justice cultures that impact how best to deliver public defense services. County policymakers generally believe locals are best positioned to determine the public defense system that can meet local needs.

More importantly, counties want **financial certainty**. Counties have little control over crime, arrest, and prosecution rates, and therefore have no control over the costs of required constitutional public defense services. Counties with higher poverty rates are least likely able to afford public defense services: they are stretched thin because they are called on to spend more funds on social services, such as medical care and housing needs, leaving less money available to spend on public defense. This is the case even though these counties are most in need of public defense services since a larger percentage of people in the county cannot hire a private attorney. What's more is a single serious felony case can break the budget of some local counties.

Will Ohio renege on its promise?

When 6AC worked in other states to balance the state's need to meet its 14th Amendment obligations with the local desire for local control and financial certainty in places like Michigan, Idaho, and Nevada, we heard similar concerns from county policymakers: they feared that the state would renege on the financial promises it made to counties. For example, if a state says that it will set public defense standards and that the state will pay the difference between what a county is currently spending and what is needed to meet that new standard, many county policymakers fear that the state will not actually pay as promised, and they will be left with the bill. Counties want to be able to control costs – through local choice of delivery system – until the state proves they will fund public defense as promised.

And this is the crux of the problem in Ohio. As originally conceived, OPD was supposed to reimburse up to 50% of the counties' costs. But the state didn't. Historically, state funding never reached the promised 50% level, dropping in some years to as low as 25%. In exchange for state reimbursement, counties were supposed to show that they complied with OPD's standards of constitutionally effective representation, but historically, the state did not create standards.

Over time, Ohio has set a precedent of reimbursing counties some unpredictable, fluctuating portion of county public defense costs without attaching those state dollars to minimum constitutionally adequate services. The increased reimbursement in recent years – whether 100% or 85% - has basically purchased the same public defense system at a higher cost.

Ohio State Bar Task Force recommendations

We have concerns with the state bar task force recommendation's opt in/opt out model.

While counties will have local control in choosing whether to opt in or out, the state and counties may be left with *more* financial uncertainty than they are in now. Under the opt in/opt out reimbursement model – unless all 88 counties opt in – the state and counties still face financial uncertainty, except now there is the added uncertainty of not knowing how many, and which

counties, will opt in or opt out any given year, and therefore how much public defense will cost the counties and state.

There is another concern with allowing counties to switch from opting in to opting out. Say an opt-in county decides to opt-out out of the state system, what happens to the state employees in that county? Most attorneys need job security, and stability in pay and benefits. A county that can switch every few years is not a safe or attractive system for attorneys to work in, which is something to consider especially if there are attorney shortages.

One way of addressing this specific point is to write into statutes that counties have the option to opt out, but once a county opts in, it can never then opt out. This is what Georgia has done.

Our biggest concern is that the State of Ohio will still have no mechanism to meet its constitutional obligation of ensuring effective public defense services in counties that opt out. No government – state or local – can opt out of the requirements of the Sixth Amendment right to counsel. For opt-out counties to be subject to state review of their public defense systems, OPD would need to be staffed and funded at a level to continually assess and monitor each opt-out county. Of course, that can be costly especially if many counties opt out. The cost may also fluctuate if, at any point, opt-in counties are allowed to opt-out, and opt-out counties are allowed to opt-in.

David and I can take questions. Thank you.



Joe Hada, President
Blaise Katter, President-Elect and Public Policy Chair

TESTIMONY TO THE INDIGENT DEFENSE STUDY TASK FORCE

I come before this task force today on behalf of the Ohio Association of Criminal Defense Lawyers (OACDL) and our more than 800 members who provide a significant portion of criminal defense representation in our state.

We deeply appreciate all the work and effort that has gone into the OSBA workgroup and this task force's commitment to creating a more fair and equitable system of indigent criminal defense in Ohio. These reforms are long overdue.

Our interest in this project is slightly different than many of the other stakeholders. By and large, our members provide indigent defense through the appointed counsel system throughout the state. Therefore, I am here to share some of our members' insights and experience with the various appointed counsel systems, as well as recommendations on how to improve them, especially in light of the changes being considered by this task force.

Further, we are working on the assumption that whatever decision a county makes — whether they opt in to the state-run system or maintain county control — it will remain necessary to have appointed counsel to deal with conflict and overflow cases. Therefore, in light of that, we want to focus our attention on the following issues.

1. Method of Appointment

The first and most important issue for us is the method of appointment for appointed counsel. We strongly urge that there be a requirement that counsel are appointed in an equal and neutral manner per county, so that all qualified attorneys get relatively equal opportunity to take available cases.

2. Decision-Making Process (Opt-In Counties)

In counties that opt in to a state-run system, we advocate that the decision-making authority over the appointed counsel system likewise be transferred away from the county. We would support a system that puts the local public defender's office in control over administering the list of appointed counsel, making appointments on a neutral and equal basis, and setting the fee rate.

3. Opt-Out Counties — Rate Setting and Annual Budgets

We want to ensure that the opt-out counties who retain county control over appointed counsel are not competing with opt-in counties for funds and all remain fully funded. We would also like to see that any county who chooses to opt out and retain local control nevertheless agreeing, as a part of that decision,

to pay appointed counsel the same appointed counsel rate as set by the OPD (both hourly and as to the cap for any particular case).

4. Availability of Part-Time Employment

We strongly support the ability for lawyers to join any PD office in an opt-in county on a part-time basis (with scaling benefits). It is a fear of our members that the amount of cases available for appointed counsel in counties that opt in will drastically reduce. In order to ameliorate that, many members would be interested in becoming part-time public defenders, while maintaining the ability to have a private civil and/or domestic practice as well.

5. A Better Model for Fair Pay

Finally, we hear many concerns from our members about their abilities financially to take appointed counsel cases under the current system. While our members are extremely grateful to the General Assembly, OPD, and the DeWine Administration for the substantial increase in indigent defense funding in recent years, there are still significant flaws with the hourly-rate system that discourages more experienced attorneys from taking court appointments. Most of our members have moved to a flat-fee business model. Calculating case costs based purely on the hourly system disincentivizes the efficient resolution of cases and does not provide a minimum guarantee of fees for taking a case. So much more goes into an attorney entering as counsel on a case than is merely reflected by billable hours, given the administrative nature of running a law practice.

While there is no perfect solution, we would advocate for a hybrid system where there is a certain flat fee that is added onto every case to help offset the administrative and logistical issues of opening a new case. This would provide more financial certainty overall and help ensure a fair fee is paid to reflect the work the attorney is doing in any case.

I look forward to engaging in a discussion with the task force on the foregoing thoughts and I, along with the entire OACDL, stand ready to assist you in any way we can to improve the future delivery of indigent defense services in Ohio.

Respectfully Submitted,



Blaise Katter, Esq.
Public Policy Chair
Ohio Association of Criminal Defense Lawyers
PH: 614-935-7720
Email: blaisekatterlaw@gmail.com



Ohio Judicial Conference

The Voice of Ohio Judges

February 29, 2024

Co-Chairs Manning and Hoops, and Members of the Task Force,

As you all know, I am Judge Stephen McIntosh, and I am the presiding judge of the Franklin County Court of Common Pleas, General Division where I have served since 2007. Prior to my time on this task force, I also served on the Ohio State Bar Association's Indigent Defense Task Force, so I am familiar with the recommendations that this group is considering and the rationale that went into that report.

I will begin by saying that the members of Ohio's judiciary share the same goals as the members of this Task Force: guaranteeing access to justice through qualified legal representation. We must be *prudent* in using taxpayer dollars, to ensure that guarantee is delivered in a cost-effective and fair manner, while not sacrificing quality representation that upholds the principle of innocent until proven guilty and ensures the rights of all.

In addition to the judicial members that served on the OSBA's Task Force, the Court Administration Committee of the Ohio Judicial Conference has reviewed the recommendations and received regular updates on the work of that group. The Judicial Conference continues to support full state funding for indigent defense irrespective of the delivery system in each county – and specifically without creating a funding advantage to counties that choose one delivery system over another. On behalf of the Ohio Judicial Conference, I appreciate that the current recommendations provide an option that counties can maintain systems of indigent defense that they currently use and that work best for them. For example, Franklin County has its own well-functioning Public Defender's office and appointed counsel system. In the smaller counties across the state there is a mixture of local public defender offices, state operated public defender offices, and in many smaller counties indigent defense is provided entirely by court appointed counsel.

I think it is vitally important that judges remain involved in the decision on what delivery model should be adopted or maintained. We understand that ultimately this decision lies with the commissioners, but we also believe that judges must be consulted and remain a part of the conversation of how best to provide indigent services in their respective courts and communities. Additionally, judges must maintain control over the appointed counsel lists, as we see daily the quality of these lawyers, and have a better understanding than most of who are more capable of handling certain types of cases.

While unpredictability is certainly a concern in funding indigent defense, this is a common problem for *all* budgeting and should never get in the way of quality representation and access to justice across Ohio. We understand the difficulty of forecasting cost based upon the number of counties that opt in or opt out and determining the process for phasing out of one delivery model into another one. The Judiciary, as well as the Bar, is trying to be mindful of all the moving parts in the justice landscape.

I thank this committee for taking the time to hear my testimony and I appreciated the opportunity to provide input to the Task Force. I support the general recommendations provided in the OSBA's Task Force report and look forward to working through the details of indigent defense delivery and funding in Ohio.