



## FINANCE COMMITTEE

### WITNESS FORM

Today's Date: May 5, 2011

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Representing: Ohio Public Defender Commission/Office of the Ohio Public Defender

Testifying on bill number: HB 153

Testifying as:    \_\_\_ Proponent  
                  \_\_\_ Opponent  
                  \_\_X\_\_ Interested Party

Are you a registered lobbyist?            \_\_X\_\_ YES       \_\_\_ NO

Are you submitting written testimony?    \_\_X\_\_ YES       \_\_\_ NO

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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**Testimony of Timothy Young, State Public Defender  
Office of the Ohio Public Defender**

**Senate Finance Committee  
HB 153 Main Operating Budget  
FY 12-13 Biennium  
Thursday, May 5, 2011**

Chairman Widener, members of the Committee, I am Tim Young, State Public Defender and Director of the Office of the Ohio Public Defender. It is my pleasure to present to you the Ohio Public Defender's Budget Proposal as included in House Bill 153 for the fiscal year 2012–2013 biennium.

In today's testimony, I wish to inform the Committee about the agency's budget and provide information on several topic areas, including:

- Reducing Dependence on General Revenue Funds
- The Impact of HB 153
- Funding for the Public Defender Information Network
- Accomplishments and System Improvements
- Redefining Requirements for the Affidavit of Indigency
- Technical Amendment regarding Branch Office Funding
- Clean-up Amendment regarding Reimbursement Rates

Reducing Dependence on General Revenue Funds

For the last several years, an overriding goal of the Ohio Public Defender budget has been to transition away from dependence on general revenue funds, while at the same time trying to increase overall funding for indigent defense. These efforts began in June 2008 when the Ohio Legislature passed SB 209, creating the Indigent Defense Support Fund (IDSF), a new non-GRF fund dedicated for indigent defense. SB 209 also created a surcharge on DUI penalties and directed the revenue to be deposited into the IDSF. Later, the legislature passed HB 562 that levied a \$10 surcharge on moving traffic violations, half of which was dedicated to the IDSF. In HB 1, the FY 10-11 Biennial Budget, the Legislature redirected the existing court costs to the IDSF and enacted additional fees dedicated to indigent defense: a \$25.00 surcharge on bail bonds and increased license suspension fees for general violations, FRA suspensions, and Class F suspensions. HB 1 also divided the IDSF 90 percent goes to the counties and 10 percent to the state office.

HB 153 continues this effort. The agency's overall budget increases 2.9 percent in FY 12 and 5.1 percent in FY 13; however, the reliance on and use of GRF declines significantly. In FY 12, the agency's GRF budget decreases 66.2 percent. Although it increases 17.8 percent in

FY 13, it remains \$10 million below the FY 11 funding level. Likewise, GRF as a percentage of both the operating and subsidy budget declines significantly. During the biennium, compared with FY 11, the agency's operating budget declines from about 60 percent GRF to around 25 percent GRF. Excluding civil legal aid funding, the subsidy budget declines from 25 percent GRF to around 7 percent GRF.

### Impact of HB 153

HB 153 essentially maintains the status quo through the next biennium. The operating budget continues current staff and programs with select enhancements, including the agency sponsoring new CLE training programs, and establishing a merit-based pay and promotion system for agency attorneys. The subsidy budget continues county reimbursement at its current level of 35 percent.

Although HB 153 maintains the status quo, the existing system remains significantly underfunded and in need of improvements. Little has changed in this regard since the 2006 *Supreme Court Task Force on Indigent and Pro Se Litigants* declared the system to be "seriously underfunded." The report also stated the current system creates the risk of denying an individual's constitutional right to counsel. While the percentage of state reimbursement will remain constant, the current system continues to underrepresent the costs--attorneys are underpaid, public defender offices are understaffed, county budgets often fail to include funding for experts, investigators, and other necessary elements for a proper defense. Despite this, in fiscal year 2012, county indigent defense system costs are expected to be \$129.1 million, more than double that of 1999. Many counties are facing dire financial situations regarding indigent defense funding and will now face even further financial strain given cuts proposed to the Local Government Fund.

The situation for the state office is also serious. HB 153 continues existing staff and operations, which are for the most part inadequate to handle all cases where there is a right to representation. The most significant example is within the agency's Legal Division. The American Bar Association's recommended standard is that public defenders handle no more than 35 appeal cases per year. Our agency's Legal Division attorneys are all well above that standard, so much so that we have placed a temporary moratorium on taking on any new cases, other than those where we are directly appointed by an appellate court. Such refusal of representation to some who are arguably entitled places the state office in a precarious position of failing to meet its Constitutional requirements.

### Accomplishments and System Improvements

Despite the reduction in funding and caseload issues, the agency has taken a number of actions in the past few years to improve the system. The Ohio Public Defender Commission passed a resolution adopting new minimum performance standards for public defenders. The Commission also amended a rule that increases the qualifications and training attorneys must have before providing representation at public expense. To help, the agency implemented a new skills-based training program that covers both direct representation and skills for managing a public defender office.

The agency also worked with the Ohio Prosecuting Attorneys Association and the Ohio Supreme Court to bring about discovery reform in criminal cases. This leads to faster case resolution, less time in county jails, fewer court appearances, fewer motions and trials, and a reduced error rate leading to fewer appeals and post-conviction proceedings. These benefits

are mirrored in the new DNA law that was passed in SB77. The agency worked closely with sponsors to achieve reform that reduces the chance of wrongful convictions, improves the DNA database, and standardizes evidence storage in Ohio.

In addition, the agency increased efforts at identifying jail time credits for incarcerated persons. By correctly identifying and applying jail time credits, actual time in a state prison may be reduced, thereby saving the state on the cost of incarceration. In FY 10, the agency identified 1,479 days that would have otherwise not been applied to the clients' total time served, thus saving the state an estimated \$102,764.

Finally, the agency worked closely with the Council on State Governments and we support efforts to implement the suggest reforms. We are working with the Municipal Judges of Ohio on proposed reform of a number of non-moving traffic violations. The agency continues to make all efforts to improve data collection and reporting so that evidence-based policies can be developed to ensure that quality, efficiency, and accountability are system drivers, without posing a risk to public safety.

#### Funding and Legislative Changes Related to the Public Defender Information Network (PDIN)

One item not funded in HB 153, but which the agency still wishes to implement is the creation and deployment of a new Public Defender Information Network (PDIN).

PDIN will be a web-based computer system that will provide a uniform case management, document management, and reimbursement payment system for public defenders and private counsel. Currently, we lack reliable and valid data regarding the indigent defense delivery system in Ohio. PDIN will be used to gather and analyze system data, provide uniformity in managing and counting cases, and provide better, more accurate, and up-to-date data for purposes of budgeting and planning. The system will automate the county reimbursement process and all but eliminate the extensive labor costs associated with the current paper-based system for both the counties and this agency.

To fund the project, in our budget request, we proposed a \$25.00 surcharge on all liquor permits with 50 percent of the revenue dedicated to PDIN. This was not included in the Executive Budget, so as an alternative, we are proposing to set aside two percent of the Indigent Defense Support Fund. The County Commissioners Association of Ohio supports this initiative and passed a resolution allowing two percent of the reimbursement funds to be used for this project. This will yield approximately \$940,000 in FY 12 and \$960,000 in FY 13 to fund the project. In return, the agency will provide the system at no cost to the counties or to private counsel. This will save the counties the expense of purchasing and maintaining their own systems for case and document management, thereby offsetting a portion of the set-aside. Attachment A includes proposed language to authorize the use of these funds and provide the agency the authority to implement the system statewide once developed. Attachment A to this testimony includes language to facilitate this request.

#### Redefining Requirements for the Affidavit of Indigency/Financial Disclosure Form

The agency seeks to change the requirements for the Affidavit of Indigency and Financial Disclosure Form. The requirement that the form be an affidavit is an anachronism. Agencies throughout Ohio require financial disclosure as a prerequisite to providing services and hold people criminally and civilly liable when false information is provided, all without an

affidavit. ODJFS does not require an affidavit, Ohio Department of Taxation does not require an affidavit, and the list goes on. And there is no impact – the criminal charge is identical whether there is an affidavit or not. The accuracy of the financial information is the important issue and we are maintaining that requirement.

An affidavit must be notarized. In many jurisdictions the financial interview is conducted in the jail by a bailiff or deputy sheriff, many of whom are not notaries. This presents a burden because the courts must supply a notary to witness and sign the affidavit. The agency can include a statement on the Financial Disclosure Form that the person, under penalty of law, may be held liable for misstatements or omissions. The form will remain virtually the same but will not be characterized legally as an affidavit. Removing this requirement also facilitates electronic filing as part of the Public Defender Information Network project. Attachment A to this testimony includes language to facilitate this request.

#### Branch Office Funding –Indigent Defense Support Fund (technical amendment)

One technical matter concerns funds for the agency's branch office operations. One option available to counties is to contract with the State Public Defender for their delivery system. This is authorized pursuant to sections 120.04(C)(7) and 120.33(B) of the Revised Code and operate in lieu of a county using a county-run public defender office or appointed counsel. Currently, 11 counties use this option. Unlike the reimbursement subsidy, the agency runs these systems directly as operating costs. The counties pay their share up front, and the agency then split-codes expenses among the state and county funds proportional to the overall statewide reimbursement rate.

Presently, the county's share of the Indigent Defense Support Fund is designated for the purpose of "reimbursing" county governments, therefore presumably not allowing disbursement of such funds for operating costs. To resolve this issue, we ask to amend R.C. 120.08 to expand the county-share portion of the IDSF to include operating these branch office systems. Attachment A to this testimony includes language to facilitate this request.

#### Clean-up Amendment regarding Reimbursement Rates

Finally, while drafting language to eliminate the need for the affidavit of indigency, we discovered that section 2941.51 includes language that requires the state to reimburse the counties for 50 percent of the costs of providing indigent defense. This language apparently was overlooked when the legislature changed the reimbursement rate to "up to" 50 percent nearly three decades ago. We propose amending section 2941.51(E) with language consistent with the reimbursement language found throughout the rest of the Revised Code. Attachment A to this testimony includes language to facilitate this request.

Chairman Widener and members of the Committee, thank you for your time and attention. I will be happy to answer any questions you may have.

## Attachment A

### Office of the Ohio Public Defender HB 153 Main Operating Budget FY 12-13 Biennium Budget Language Proposals

#### **120.08 Indigent defense support fund.**

There is hereby created in the state treasury the indigent defense support fund, consisting of money paid into the fund pursuant to sections 4507.45, 4509.101, 4510.22, and 4511.19 of the Revised Code and pursuant to sections 2937.22, 2949.091, and 2949.094 of the Revised Code out of the additional court costs imposed under those sections. The state public defender shall use at least ~~ninety~~ eighty-eight per cent of the money in the fund for the purpose of reimbursing county governments for expenses incurred pursuant to sections 120.18, 120.28, and 120.33 of the Revised Code, or for operating its system pursuant to division (C)(7) of section 120.04 of the Revised Code and division (B) of section 120.33 of the Revised Code. Disbursements from the fund to county governments shall ~~be made at least once per year and~~ shall be allocated proportionately so that each county receives an equal percentage of its total cost for operating its county public defender system, its joint county public defender system, its county appointed counsel system, or its system operated under division (C)(7) of section 120.04 of the Revised Code and division (B) of section 120.33 of the Revised Code. The state public defender may use not more than two percent of the money in the fund for purposes of developing and implementing electronic forms or for establishing and maintaining an information technology system used for the uniform operation of this chapter, and not more than ten per cent of the money in the fund for the purposes of appointing assistant state public defenders or for providing other personnel, equipment, and facilities necessary for the operation of the state public defender office.

#### **120.04 State public defender - powers and duties.**

(A) The state public defender shall serve at the pleasure of the Ohio public defender commission and shall be an attorney with a minimum of four years of experience in the practice of law and be admitted to the practice of law in this state at least one year prior to appointment.

(B) The state public defender shall do all of the following:

(1) Maintain a central office in Columbus. The central office shall be provided with a library of adequate size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment.

(2) Appoint assistant state public defenders, all of whom shall be attorneys admitted to the practice of law in this state, and other personnel necessary for the operation of the state public defender office. Assistant state public defenders shall be appointed on a full-time basis. The state public defender, assistant state public defenders, and employees appointed by the state public defender shall not engage in the private practice of law.

(3) Supervise the compliance of county public defender offices, joint county public defender offices, and county appointed counsel systems with standards established by rules of the

Ohio public defender commission pursuant to division (B) of section 120.03 of the Revised Code;

(4) Keep and maintain financial records of all cases handled and develop records for use in the calculation of direct and indirect costs, in the operation of the office, and report periodically, but not less than annually, to the commission on all relevant data on the operations of the office, costs, projected needs, and recommendations for legislation or amendments to court rules, as may be appropriate to improve the criminal justice system;

(5) Collect all moneys due the state for reimbursement for legal services under this chapter and under section 2941.51 of the Revised Code and institute any actions in court on behalf of the state for the collection of such sums that the state public defender considers advisable. Except as provided otherwise in division (D) of section 120.06 of the Revised Code, all moneys collected by the state public defender under this chapter and section 2941.51 of the Revised Code shall be deposited in the state treasury to the credit of the client payment fund, which is hereby created. All moneys credited to the fund shall be used by the state public defender to appoint assistant state public defenders and to provide other personnel, equipment, and facilities necessary for the operation of the state public defender office, to reimburse counties for the operation of county public defender offices, joint county public defender offices, and county appointed counsel systems pursuant to sections 120.18, 120.28, and 120.33 of the Revised Code, or to provide assistance to counties in the operation of county indigent defense systems.

(6) With respect to funds appropriated to the commission to pay criminal costs, perform the duties imposed by sections 2949.19 and 2949.201 of the Revised Code;

(7) Establish standards and guidelines for the reimbursement, pursuant to sections 120.18, 120.28, 120.33, 2941.51, and 2949.19 of the Revised Code, of counties for the operation of county public defender offices, joint county public defender offices, and county appointed counsel systems and for other costs related to felony prosecutions;

(8) Establish maximum amounts that the state will reimburse the counties pursuant to sections 120.18, 120.28, 120.33, and 2941.51 of the Revised Code;

(9) Establish maximum amounts that the state will reimburse the counties pursuant to section 120.33 of the Revised Code for each specific type of legal service performed by a county appointed counsel system;

(10) Administer sections 120.18, 120.28, 120.33, 2941.51, and 2949.19 of the Revised Code and make reimbursements pursuant to those sections;

(11) Administer the program established pursuant to sections 120.51 to 120.55 of the Revised Code for the charitable public purpose of providing financial assistance to legal aid societies. Neither the state public defender nor any of the state public defender's employees who is responsible in any way for the administration of that program and who performs those administrative responsibilities in good faith is in any manner liable if a legal aid society that is provided financial assistance under the program uses the financial assistance other than in accordance with sections 120.51 to 120.55 of the Revised Code or fails to comply with the requirements of those sections.

(12) Establish an office for the handling of appeal and postconviction matters;

(13) Provide technical aid and assistance to county public defender offices, joint county public defender offices, and other local counsel providing legal representation to indigent persons, including representation and assistance on appeals.

(C) The state public defender may do any of the following:

(1) In providing legal representation, conduct investigations, obtain expert testimony, take depositions, use other discovery methods, order transcripts, and make all other preparations which are appropriate and necessary to an adequate defense or the prosecution of appeals and other legal proceedings;

(2) Seek, solicit, and apply for grants for the operation of programs for the defense of indigent persons from any public or private source, and may receive donations, grants, awards, and similar funds from any lawful source. Such funds shall be deposited in the state treasury to the credit of the public defender gifts and grants fund, which is hereby created.

(3) Make all the necessary arrangements to coordinate the services of the office with any federal, county, or private programs established to provide legal representation to indigent persons and others, and to obtain and provide all funds allowable under any such programs;

(4) Consult and cooperate with professional groups concerned with the causes of criminal conduct, the reduction of crime, the rehabilitation and correction of persons convicted of crime, the administration of criminal justice, and the administration and operation of the state public defender's office;

(5) Accept the services of volunteer workers and consultants at no compensation other than reimbursement for actual and necessary expenses;

(6) Prescribe any forms and require the use of any electronic forms or information technology systems provided by the state public defender office that are necessary for the uniform operation of this chapter;

(7) Contract with a county public defender commission or a joint county public defender commission to provide all or any part of the services that a county public defender or joint county public defender is required or permitted to provide by this chapter, or contract with a board of county commissioners of a county that is not served by a county public defender commission or a joint county public defender commission for the provision of services in accordance with section 120.33 of the Revised Code. All money received by the state public defender pursuant to such a contract shall be credited to either the multi-county: county share fund or, if received as a result of a contract with Trumbull county, the Trumbull county: county share fund.

(8) Authorize persons employed as criminal investigators to attend the Ohio peace officer training academy or any other peace officer training school for training;

(9) Procure a policy or policies of malpractice insurance that provide coverage for the state public defender and assistant state public defenders in connection with malpractice claims that may arise from their actions or omissions related to responsibilities derived pursuant to this chapter;

(D) No person employed by the state public defender as a criminal investigator shall attend the Ohio peace officer training academy or any other peace officer training school unless authorized to do so by the state public defender.

### **120.33 Alternative system of selected or appointed counsel.**

(A) In lieu of using a county public defender or joint county public defender to represent indigent persons in the proceedings set forth in division (A) of section 120.16 of the Revised Code, the board of county commissioners of any county may adopt a resolution to pay counsel who are either personally selected by the indigent person or appointed by the court. The resolution shall include those provisions the board of county commissioners considers necessary to provide effective representation of indigent persons in any proceeding for which counsel is provided under this section. The resolution shall include provisions for contracts with any municipal corporation under which the municipal corporation shall reimburse the county for counsel appointed to represent indigent persons charged with violations of the ordinances of the municipal corporation.

(1) In a county that adopts a resolution to pay counsel, an indigent person shall have the right to do either of the following:

(a) To select the person's own personal counsel to represent the person in any proceeding included within the provisions of the resolution;

(b) To request the court to appoint counsel to represent the person in such a proceeding.

(2) The court having jurisdiction over the proceeding in a county that adopts a resolution to pay counsel shall, after determining that the person is indigent and entitled to legal representation under this section, do either of the following:

(a) By signed journal entry recorded on its docket, enter the name of the lawyer selected by the indigent person as counsel of record;

(b) Appoint counsel for the indigent person if the person has requested the court to appoint counsel and, by signed journal entry recorded on its dockets, enter the name of the lawyer appointed for the indigent person as counsel of record.

(3) The board of county commissioners shall establish a schedule of fees by case or on an hourly basis to be paid to counsel for legal services provided pursuant to a resolution adopted under this section. Prior to establishing the schedule, the board of county commissioners shall request the bar association or associations of the county to submit a proposed schedule. The schedule submitted shall be subject to the review, amendment, and approval of the board of county commissioners.

(4) Counsel selected by the indigent person or appointed by the court at the request of an indigent person in a county that adopts a resolution to pay counsel, except for counsel appointed to represent a person charged with any violation of an ordinance of a municipal corporation that has not contracted with the county commissioners for the payment of appointed counsel, shall be paid by the county and shall receive the compensation and expenses the court approves. Each request for payment shall be accompanied by a financial disclosure form and an affidavit of indigency that are completed by the indigent person on forms prescribed by the state public defender. Compensation and expenses shall not exceed

the amounts fixed by the board of county commissioners in the schedule adopted pursuant to division (A)(3) of this section. No court shall approve compensation and expenses that exceed the amount fixed pursuant to division (A)(3) of this section.

The fees and expenses approved by the court shall not be taxed as part of the costs and shall be paid by the county. However, if the person represented has, or may reasonably be expected to have, the means to meet some part of the cost of the services rendered to the person, the person shall pay the county an amount that the person reasonably can be expected to pay. Pursuant to section 120.04 of the Revised Code, the county shall pay to the state public defender a percentage of the payment received from the person in an amount proportionate to the percentage of the costs of the person's case that were paid to the county by the state public defender pursuant to this section. The money paid to the state public defender shall be credited to the client payment fund created pursuant to division (B)(5) of section 120.04 of the Revised Code.

The county auditor shall draw a warrant on the county treasurer for the payment of counsel in the amount fixed by the court, plus the expenses the court fixes and certifies to the auditor. The county auditor shall report periodically, but not less than annually, to the board of county commissioners and to the state public defender the amounts paid out pursuant to the approval of the court. The board of county commissioners, after review and approval of the auditor's report, or the county auditor, with permission from and notice to the board of county commissioners, may then certify it to the state public defender for reimbursement. The state public defender may pay a requested reimbursement only if the request for reimbursement is accompanied by a financial disclosure form ~~and an affidavit of indigency~~ completed by the indigent person on forms prescribed by the state public defender or if the court certifies by electronic signature as prescribed by the state public defender that a financial disclosure form ~~and affidavit of indigency~~ have has been completed by the indigent person and are available for inspection. If a request for the reimbursement of the cost of counsel in any case is not received by the state public defender within ninety days after the end of the calendar month in which the case is finally disposed of by the court, unless the county has requested and the state public defender has granted an extension of the ninety-day limit, the state public defender shall not pay the requested reimbursement. The state public defender shall also review the report and, in accordance with the standards, guidelines, and maximums established pursuant to divisions (B)(7) and (8) of section 120.04 of the Revised Code, prepare a voucher for fifty per cent of the total cost of each county appointed counsel system in the period of time covered by the certified report and a voucher for fifty per cent of the costs and expenses that are reimbursable under section 120.35 of the Revised Code, if any, or, if the amount of money appropriated by the general assembly to reimburse counties for the operation of county public defender offices, joint county public defender offices, and county appointed counsel systems is not sufficient to pay fifty per cent of the total cost of all of the offices and systems other than costs and expenses that are reimbursable under section 120.35 of the Revised Code, for the lesser amount required by section 120.34 of the Revised Code.

(5) If any county appointed counsel system fails to maintain the standards for the conduct of the system established by the rules of the Ohio public defender commission pursuant to divisions (B) and (C) of section 120.03 or the standards established by the state public defender pursuant to division (B)(7) of section 120.04 of the Revised Code, the Ohio public defender commission shall notify the board of county commissioners of the county that the county appointed counsel system has failed to comply with its rules or the standards of the state public defender. Unless the board of county commissioners corrects the conduct of its appointed counsel system to comply with the rules and standards within ninety days after

the date of the notice, the state public defender may deny all or part of the county's reimbursement from the state provided for in division (A)(4) of this section.

(B) In lieu of using a county public defender or joint county public defender to represent indigent persons in the proceedings set forth in division (A) of section 120.16 of the Revised Code, and in lieu of adopting the resolution and following the procedure described in division (A) of this section, the board of county commissioners of any county may contract with the state public defender for the state public defender's legal representation of indigent persons. A contract entered into pursuant to this division may provide for payment for the services provided on a per case, hourly, or fixed contract basis.

(C) If a court appoints an attorney pursuant to this section to represent a petitioner in a postconviction relief proceeding under section 2953.21 of the Revised Code, the petitioner has received a sentence of death, and the proceeding relates to that sentence, the attorney who represents the petitioner in the proceeding pursuant to the appointment shall be certified under Rule 20 of the Rules of Superintendence for the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed.

### **120.36 Application fee - assessment - nonpayment - disposition - annual report.**

(A) (1) Subject to division (A)(2), (3), (4), (5), or (6) of this section, if a person who is a defendant in a criminal case or a party in a case in juvenile court requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court in which the criminal case is initially filed or the juvenile court, whichever is applicable, shall assess, unless the application fee is waived or reduced, a non-refundable application fee of twenty-five dollars.

The court shall direct the person to pay the application fee to the clerk of court. The person shall pay the application fee to the clerk of court at the time the person files ~~an affidavit of indigency~~ or a financial disclosure form with the court, a state public defender, a county or joint county public defender, or any other counsel appointed by the court or within seven days of that date. If the person does not pay the application fee within that seven-day period, the court shall assess the application fee at sentencing or at the final disposition of the case.

(2) For purposes of this section, a criminal case includes any case involving a violation of any provision of the Revised Code or of an ordinance of a municipal corporation for which the potential penalty includes loss of liberty and includes any contempt proceeding in which a court may impose a term of imprisonment.

(3) In a juvenile court proceeding, the court shall not assess the application fee against a child if the court appoints a guardian ad litem for the child or the court appoints an attorney to represent the child at the request of a guardian ad litem.

(4) The court shall not assess an application fee for a postconviction proceeding or when the defendant files an appeal.

(5)(a) Except when the court assesses an application fee pursuant to division (A)(5)(b) of this section, the court shall assess an application fee when a person is charged with a violation of a community control sanction or a violation of a post-release control sanction.

(b) If a charge of violating a community control sanction or post-release control sanction described in division (A)(5)(a) of this section results in a person also being charged with violating any provision of the Revised Code or an ordinance of a municipal corporation, the court shall only assess an application fee for the case that results from the additional charge.

(6) If a case is transferred from one court to another court and the person failed to pay the application fee to the court that initially assessed the application fee, the court that initially assessed the fee shall remove the assessment, and the court to which the case was transferred shall assess the application fee.

(7) The court shall assess an application fee pursuant to this section one time per case. For purposes of assessing the application fee, a case means one complete proceeding or trial held in one court for a person on an indictment, information, complaint, petition, citation, writ, motion, or other document initiating a case that arises out of a single incident or a series of related incidents, or when one individual is charged with two or more offenses that the court handles simultaneously. The court may waive or reduce the fee for a specific person in a specific case upon a finding that the person lacks financial resources that are sufficient to pay the fee or that payment of the fee would result in an undue hardship.

(B) No court, state public defender, county or joint county public defender, or other counsel appointed by the court shall deny a person the assistance of counsel solely due to the person's failure to pay the application fee assessed pursuant to division (A) of this section. A person's present inability, failure, or refusal to pay the application fee shall not disqualify that person from legal representation.

(C) The application fee assessed pursuant to division (A) of this section is separate from and in addition to any other amount assessed against a person who is found to be able to contribute toward the cost of the person's legal representation pursuant to division (D) of section 2941.51 of the Revised Code.

(D) The clerk of the court that assessed the fees shall forward all application fees collected pursuant to this section to the county treasurer for deposit in the county treasury. The county shall retain eighty per cent of the application fees so collected to offset the costs of providing legal representation to indigent persons. Not later than the last day of each month, the county auditor shall remit twenty per cent of the application fees so collected in the previous month to the state public defender. The state public defender shall deposit the remitted fees into the state treasury to the credit of the client payment fund created pursuant to division (B)(5) of section 120.04 of the Revised Code. The state public defender may use that money in accordance with that section.

(E) On or before the twentieth day of each month beginning in February of the year 2007, each clerk of court shall provide to the state public defender a report including all of the following:

(1) The number of persons in the previous month who requested or were provided a state public defender, county or joint county public defender, or other counsel appointed by the court;

(2) The number of persons in the previous month for whom the court waived the application fee pursuant to division (A) of this section;

(3) The dollar value of the application fees assessed pursuant to division (A) of this section in the previous month;

(4) The amount of assessed application fees collected in the previous month;

(5) The balance of unpaid assessed application fees at the open and close of the previous month.

(F) As used in this section:

(1) "Clerk of court" means the clerk of the court of common pleas of the county, the clerk of the juvenile court of the county, the clerk of the domestic relations division of the court of common pleas of the county, the clerk of the probate court of the county, the clerk of a municipal court in the county, the clerk of a county-operated municipal court, or the clerk of a county court in the county, whichever is applicable.

(2) "County-operated municipal court" has the same meaning as in section 1901.03 of the Revised Code.

#### **2941.51 Counsel for indigents.**

(A) Counsel appointed to a case or selected by an indigent person under division (E) of section 120.16 or division (E) of section 120.26 of the Revised Code, or otherwise appointed by the court, except for counsel appointed by the court to provide legal representation for a person charged with a violation of an ordinance of a municipal corporation, shall be paid for their services by the county the compensation and expenses that the trial court approves. Each request for payment shall be accompanied by a financial disclosure form ~~and an affidavit of indigency~~ that are is completed by the indigent person on forms prescribed by the state public defender. Compensation and expenses shall not exceed the amounts fixed by the board of county commissioners pursuant to division (B) of this section.

(B) The board of county commissioners shall establish a schedule of fees by case or on an hourly basis to be paid by the county for legal services provided by appointed counsel. Prior to establishing such schedule, the board shall request the bar association or associations of the county to submit a proposed schedule. The schedule submitted shall be subject to the review, amendment, and approval of the board of county commissioners.

(C) In a case where counsel have been appointed to conduct an appeal under Chapter 120. of the Revised Code, such compensation shall be fixed by the court of appeals or the supreme court, as provided in divisions (A) and (B) of this section.

(D) The fees and expenses approved by the court under this section shall not be taxed as part of the costs and shall be paid by the county. However, if the person represented has, or reasonably may be expected to have, the means to meet some part of the cost of the services rendered to the person, the person shall pay the county an amount that the person reasonably can be expected to pay. Pursuant to section 120.04 of the Revised Code, the county shall pay to the state public defender a percentage of the payment received from the person in an amount proportionate to the percentage of the costs of the person's case that were paid to the county by the state public defender pursuant to this section. The money paid to the state public defender shall be credited to the client payment fund created pursuant to division (B)(5) of section 120.04 of the Revised Code.

(E) The county auditor shall draw a warrant on the county treasurer for the payment of such counsel in the amount fixed by the court, plus the expenses that the court fixes and certifies to the auditor. The county auditor shall report periodically, but not less than annually, to the board of county commissioners and to the Ohio public defender commission the amounts paid out pursuant to the approval of the court under this section, separately stating costs and expenses that are reimbursable under section 120.35 of the Revised Code. The board, after review and approval of the auditor's report, may then certify it to the state public defender for reimbursement. The request for reimbursement shall be accompanied by a financial disclosure form completed by each indigent person for whom counsel was provided on a form prescribed by the state public defender. The state public defender shall review the report and, in accordance with the standards, guidelines, and maximums established pursuant to divisions (B)(7) and (8) of section 120.04 of the Revised Code, pay fifty per cent of the total cost, other than costs and expenses that are reimbursable under section 120.35 of the Revised Code, if any, of paying appointed counsel in each county and pay fifty per cent of costs and expenses that are reimbursable under section 120.35 of the Revised Code, if any, to the board or, if the amount of money appropriated by the general assembly to reimburse counties for the operation of county public defender offices, joint county public defender offices, and county appointed counsel systems is not sufficient to pay fifty per cent of the total cost of all of the offices and systems other than costs and expenses that are reimbursable under section 120.35 of the Revised Code, for the lesser amount required by section 120.34 of the Revised Code.

(F) If any county system for paying appointed counsel fails to maintain the standards for the conduct of the system established by the rules of the Ohio public defender commission pursuant to divisions (B) and (C) of section 120.03 of the Revised Code or the standards established by the state public defender pursuant to division (B)(7) of section 120.04 of the Revised Code, the commission shall notify the board of county commissioners of the county that the county system for paying appointed counsel has failed to comply with its rules. Unless the board corrects the conduct of its appointed counsel system to comply with the rules within ninety days after the date of the notice, the state public defender may deny all or part of the county's reimbursement from the state provided for in this section.

Table 1  
Office of the Ohio Public Defender  
County Level Indigent Defense Cost and Caseloads  
FY 2000 - 2013

Fiscal Year	Total Cost	GRF Expended	Non-GRF Expended	Total Expended	Percent Reimbursed	GRF % of Expenditures	Cases Reported
FY 00	70,025,701	34,137,823	-	34,137,823	48.8%	100%	317,598
FY 01	75,214,769	36,412,030	-	36,412,030	48.4%	100%	328,348
FY 02	85,255,049	33,600,492	-	33,600,492	39.4%	100%	330,768
FY 03	94,181,939	30,004,209	-	30,004,209	31.9%	100%	385,015
FY 04	98,079,085	31,490,326	-	31,490,326	32.1%	100%	395,339
FY 05	101,954,691	33,052,001	-	33,052,001	32.4%	100%	404,199
FY 06	107,553,258	31,695,503	-	31,695,503	29.5%	100%	409,987
FY 07	109,341,314	31,658,289	-	31,658,289	29.0%	100%	401,398
FY 08	112,940,155	30,395,039	-	30,395,039	26.9%	100%	407,990
FY 09	117,174,752	27,048,959	3,700,000	30,748,959	26.2%	88%	408,690
FY 10	115,727,163	15,515,530	24,884,983	40,400,513	34.9%	38%	404,669
eFY 11	123,470,500	12,636,040	30,578,635	43,214,675	35.0%	29%	424,900
eFY 12	129,139,000	3,003,650	42,195,000	45,198,650	35.0%	7%	446,150
eFY 13	133,510,200	3,603,570	43,125,000	46,728,570	35.0%	8%	468,470

**Total Cost:** The 100 percent amount submitted for reimbursement plus Branch Office expenditures.

**GRF Expended:** The amount of GRF appropriations actually expended, including Mandate Assistance and Supreme Court Fun-

**Non-GRF Expended:** Expenditures from the Indigent Defense Support Fund

**Percent Reimbursed:** The average percentage reimbursed for all counties for the fiscal year. The actual rate by county may vary based on timing issues.

**GRF % of Expenditures:** The percentage of total state expenditures made from General Revenue.

**Cases Reported:** The number of closed cases reported to the Ohio Public Defender for reimbursement, plus the branch office closed caseloads.