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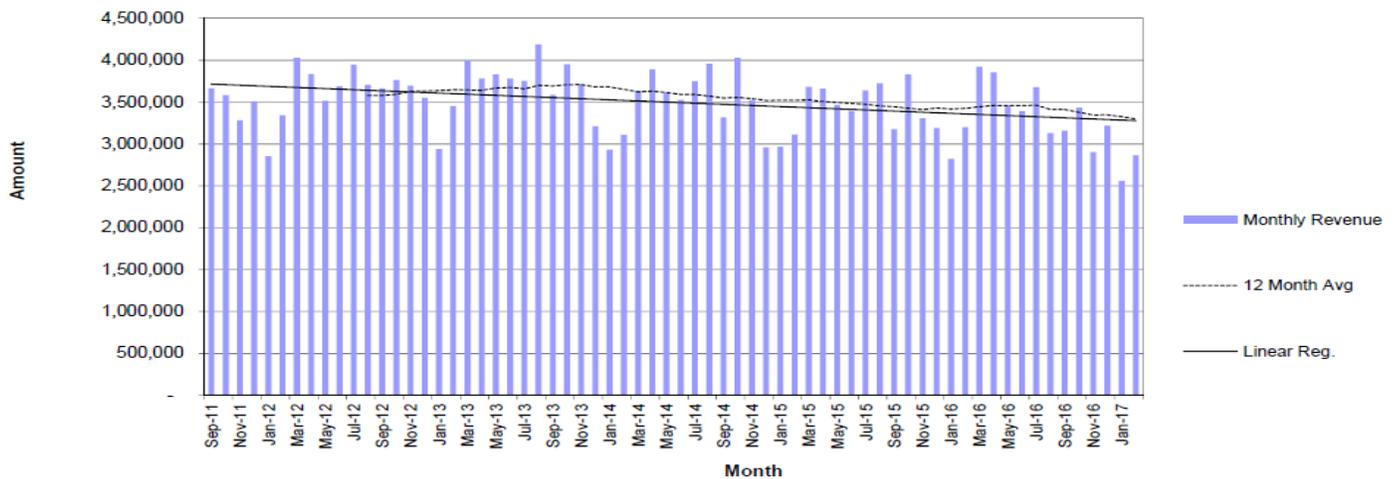
House Bill 49 – FY 18-19 Biennium Operating Budget
Senate Finance Higher Education Subcommittee
Office of the Ohio Public Defender (PUB) Testimony
May 4, 2017

Chairman Gardner, Vice Chair Williams, and Members of the Subcommittee, my name is Tim Young, and I am the Ohio Public Defender. Thank you for the opportunity to testify about my office's budget for the upcoming biennium.

Because it's imperative to understanding our current budget request and situation, I'll start with a brief history. OPD's current operating budget is drastically underfunded, which is compounded by a long history of underfunding. From FY 2000 to FY 2015, OPD's operating budget grew only 7.7 percent, or half of a percentage point per year. The Consumer Price Index during this same period increased 37 percent. While caseloads, workloads, and the prison population increased dramatically, OPD's staff has decreased by nearly one-third.

In an attempt to address the severe underfunding of the current biennium budget, I immediately began to meet with OBM Budget Analyst and Director Tim Keen. Working alongside OBM, we delivered a message to the Governor's Office about OPD's funding. The Governor heard our message and intended to fund an additional seven positions through increased appropriations in Fund 5DY0 (the Indigent Defense Support Fund). Unfortunately, revenue in Fund 5DY0 has been highly volatile and on a downward decline. At the time this agency filed our FY 2018-2019 budget request, revenues were still averaging about \$3.4 million per month. As of today, however, they are closer to \$3.2 million per month, and looking ahead will likely be around \$3.1 million per month during the next biennium.

**Ohio Public Defender
5DY0 Revenue Collections By Month**



Because of these declining revenues, the proposed increased appropriation meant to provide greater support to our operations will not be supported by revenue. I certainly appreciate the Governor's acknowledgement that our office is in desperate need of additional personnel and his efforts to provide relief. Unfortunately, basing the increase on a declining and volatile revenue stream places OPD in the position of facing a flat, or possibly, a declining budget. For us to achieve the budget the Governor intended, additional funds must be appropriated.

OPD's mission is to protect the rights of indigent persons throughout Ohio by providing quality representation and leadership in the criminal and juvenile justice systems. Our vision is to be a nationally recognized leader in indigent defense that provides superior representation and advocacy, while affirming the dignity of our clients and operating with fiscal and professional integrity.

Based on this foundation, and working with numerous interested parties—including the County Commissioners Association of Ohio, the Ohio Judicial Conference, the Ohio State Bar Association, the Ohio Association of Criminal Defense Lawyers, and state legislators—the agency has identified five broad policy goals:

1. Improve the quality and efficiency of Ohio's indigent defense system by increasing state funding, supervision, and services.
2. Assess all state and county indigent defense systems to determine whether they are operating efficiently and effectively, and whether the systems are accountable and exhibit best practices.
3. Increase and improve OPD's ability to meet its statutory obligation to supervise county compliance with state standards, laws, rules, and policies.
4. Provide an increased level of services to counties, focused on training and development, and seek opportunities to coordinate shared services among counties and the State.
5. Increase compensation to indigent defense service providers, which will help retain quality lawyers and properly compensate them when they perform all necessary duties when handling a case.

Unfortunately, OPD has not been able to make progress toward achieving these goals this biennium. Our operating budget for each year of the current biennium fell \$1.4 million short of allowing the agency to continue its then-existing operations, pushing these goals further out of reach.

The primary focus of this budget is to maintain the core functions of OPD's Columbus office, and to make an effort to obtain the funding and staffing that have been reduced over the past 15 years despite increased demand. During the past decade and a half, the agency's operating budget has remained balanced only through continued attrition of full-time positions and suppression of starting salaries and raises. When the State has dedicated additional funding to indigent defense, it has been allocated to county reimbursement—not to the Agency's operating

budget. For this reason, we asked the House to add an additional General Revenue Fund appropriation of approximately \$1.1 million per year to be added to our main operating line item, 019401: State Legal Defense Services. This appropriation will fill the gap between our current revenues and expenditures, and allow us to remain solvent and maintain our current level of services.

The House did add about half of our request, \$500,000 per year, to GRF line item 019401. OPD appreciates the additional funds and recognizes the deliberation and sacrifice that increase involved. However, the funding of our current indigent defense system and the costs associated with updating the 30-year-old rate system have not been met, and the agency remains underfunded. For this reason, we are requesting that the Senate add an additional amount of \$624,150 in FY 2018 and \$669,366 in FY 2019 to the agency's operating budget (GRF ALI 019401). The table below shows our operating budget situation.

Ohio Public Defender Operating Budget
Revenues and Expenditures
FY 18-19 with House Recommendations

Item	FY 18	FY 19
Revenues		
GRF (401 & 405)	3,935,087	4,156,983
Fund 5DY0	6,324,000	6,324,000
Other non-GRF	1,753,530	1,753,530
Total Revenues	12,012,617	12,234,513
Expenditures		
Executive Budget Recommendation	12,636,767	12,903,879
Annual Shortfall	(624,150)	(669,366)

The House also added additional funds for county reimbursement intended to increase the state reimbursement rate to approximately 45 percent. However, the House-passed version of HB 49 includes a guarantee of 50 percent reimbursement for non-capital cases, 100 percent reimbursement for capital cases, and eliminates the pro-rata reduction language when there are insufficient appropriations. At minimum, an additional appropriation of \$6,087,962 in FY 2018 and \$6,976,979 in FY 2019 over and above the amounts included in the House-passed version are required to meet this guarantee.

My office has already been working with counties to raise their appointed counsel rates, some of which are 30 years old. With the additional state funding and reimbursement guarantee, it is likely many counties will, in fact, increase the fees they are paying defense counsel. As counties raise these fees, overall reimbursement requests will increase, yet our office will be making

payments from accounts that currently have a finite amount of money. This will result in an inability to meet the guarantee unless continuous additional funding is available. The table below shows our original projections situation along with various reimbursement rate scenarios depending on the level of monthly revenue from the Indigent Defense Support Fund. However, the 100 percent cost projection could be several million dollars higher with the State guaranteeing 100 percent reimbursement in death penalty cases, or if counties increase their fee schedules.

**County Reimbursement FY18-19
GRF & Indigent Defense Support Fund (SDY0) Monthly Estimates**

Item	\$3.3 Million per Month		\$3.2 Million per Month		Most Likely Scenario		\$3.0 Million per Month	
	FY 18	FY 19	FY 18	FY 19	FY 18	FY 19	FY 18	FY 19
	100% Cost	139,283,783	143,338,026	139,283,783	143,338,026	139,283,783	143,338,026	139,283,783
GRF	32,677,930	33,816,034	32,677,930	33,816,034	32,677,930	33,816,034	32,677,930	33,816,034
SDY0	32,868,000	32,868,000	31,872,000	31,872,000	30,876,000	30,876,000	29,880,000	29,880,000
Total	65,545,930	66,684,034	64,549,930	65,688,034	63,553,930	64,692,034	62,557,930	63,696,034
Rate	47.1%	46.5%	46.3%	45.8%	45.6%	45.1%	44.9%	44.4%
Amt for 50%	69,641,892	71,669,013	69,641,892	71,669,013	69,641,892	71,669,013	69,641,892	71,669,013
Shortfall	4,095,962	4,984,979	5,091,962	5,980,979	6,087,962	6,976,979	7,083,962	7,972,979
Amt By All:								
GRF 019501	3,931,490	4,786,871	4,887,496	5,743,289	5,843,502	6,699,707	6,799,508	7,656,125
GRF 019404	34,766	41,158	43,221	49,381	51,675	57,604	60,129	65,828
GRF 019403	129,706	156,950	161,246	188,309	192,786	219,668	224,326	251,026

*Additional funds above these levels may be necessary to fund 100 percent of death penalty cases or if counties increase their fee schedules.

These increases are long overdue and necessary. The funding for indigent defense has been flat or decreasing for far too long. The counties have been required to increase funding when the State does not fund 50 percent. These county increases do not, however, actually improve indigent defense—they simply fund the portion of costs that the State does not. As a result, counties are hesitant to increase funding because there is no guarantee that the State will pay the portion originally promised. It is time for the State to guarantee 50 percent county reimbursement. Only then can we move forward and improve underfunded indigent defense essential to our justice system and the Constitution.

Adequately funding indigent defense systems is necessary for a number of reasons. The justice system is, by design, adversarial. When one side is underfunded and lacks quality oversight, the system cannot function as intended. There is an increased risk of sending innocent Ohioans to prison. Inappropriately excessive punishments become reality. Increased appeals, increased post-conviction litigation, a growing distrust of the justice system, and an ever-increasing prison population will persist if indigent defense remains underfunded and unaccountable.

Like many states, Ohio is taking a critical look at the outsized growth of its criminal justice system over the past three decades. A high-quality indigent defense system helps ensure that the right people are in prison, serving the right sentences. Well-trained, adequately supported defense counsel are the most likely obstacle between an innocent Ohioan and a wrongful conviction. Fixing Ohio's long-neglected indigent defense system *will* cost the state more than it currently spends on the system, but savings will be realized in other areas of the criminal justice system. Local jail populations and operating costs will stabilize, or even decrease, as cases are processed more quickly and efficiently, as defense attorneys identify alternative placements or monitoring systems for clients awaiting trial. Ohio's prison system will also benefit, as more sentences are legally sound and appropriate, and as more clients are diverted to appropriate community alternatives. Ohio's courts will become more efficient and save time and money, as defense attorneys become more prepared to proceed with cases, better able to represent clients, and less likely to commit constitutional errors that result in legal appeals.

Chairman Gardner, Vice Chair Williams, and Members of the Subcommittee, thank you for the opportunity to testify. I hope you agree that Ohio's indigent defense system needs significant additional state support. I will be happy to answer any questions you may have.