

- County reimbursement rate registers around 33%
- Reductions in staff and services
- Information technology upgrade delayed indefinitely

Public Defender Commission, Ohio

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ROLE

Criminal defendants have a constitutional right to court appointed attorneys if the accused are financially unable to retain private counsel, a right guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution. The right to counsel extends from the time that judicial proceedings have been initiated against the accused, whether by way of formal charge, preliminary hearing, indictment, information, or arraignment, through sentencing and appeal. There is no absolute right to appointed counsel in post-conviction proceedings.

The Ohio Public Defender Commission, which was created effective January 13, 1976, pursuant to Am. Sub. H.B. 164 of the 111th General Assembly, provides, supervises, and coordinates legal representation for persons who cannot afford to hire an attorney to represent them in criminal court. The Commission's largest activity in that regard is the administration of a subsidy program that partially reimburses counties for indigent defense expenditures related to the operation of local public defender offices or the use of appointed counsel.

The Commission also:

- Provides legal services to inmates at the state's correctional facilities, trial level representation in some capital cases, and appellate and post-conviction appeals in capital cases.
- Acts as a conduit through which flows funding for the Ohio Legal Assistance Foundation (OLAF) for the purpose of providing financial assistance to legal aid societies throughout the state.

The Commission itself consists of nine members. The Governor appoints five members, including the chair. The Supreme Court appoints the other four members. To foster a non-partisan structure, no more than five Commission members can be from one of the two major political parties. The Commission appoints a State Public Defender who maintains and administers the Office of the Ohio Public Defender. The Commission and the Office of the Public Defender share a common state budget.

In meeting the right to counsel obligations in criminal matters, each county has the option of: (1) establishing a county public defender system, (2) establishing a joint county public defender system, (3) adopting a schedule to pay private appointed counsel, (4) contracting with the State Public Defender, or (5) contracting with a non-profit corporation. A county may use one or any combination of these five options, and, in point of fact, most opt to utilize county public defender offices or appointed counsel systems.

Agency In Brief					
Number of Employees*	Total Appropriations-All Funds		GRF Appropriations		Appropriation Bill(s)
	2004	2005	2004	2005	
137	\$57.7 million	\$59.8 million	\$39.9 million	\$41.9 million	Am. Sub. H.B. 95

*Employee head count obtained from the Department of Administrative Services (DAS) payroll reports as of June 28, 2003.

OVERVIEW

GRF DEPENDENCE

The statutory responsibilities performed by the Commission continue to be financed primarily through the state's GRF, although its percentage of the Commission's total annual budget has shrunk in recent years. Whereas GRF spending comprised almost 80% of total Commission expenditures in FYs 1992 and 1993, it has since dropped to around 70%. Over that time period, around 75% of the Commission's total GRF budget has been committed to the state's County Reimbursement program. Also of note is that approximately 25% of the Commission's total annual budget has been used to provide non-GRF support to legal aid societies around the state through the Ohio Legal Assistance Foundation.

FY 2002-2003 BIENNIUM GRF EXPENDITURE REDUCTIONS

The Commission's original total GRF appropriations for FYs 2002 and 2003, as enacted by Am. Sub. H.B. 94 of the 124th General Assembly, were \$45.1 million and \$46.1 million, respectively. The original FY 2002 GRF appropriated total was subsequently reduced by \$3.3 million, or 7.4%. And the original FY 2003 GRF appropriated total was subsequently reduced by \$7.5 million, or 16.3%. Those GRF appropriation reductions are summarized in Table 1 below.

Total GRF Appropriations	FY 2002	FY 2003
Original Appropriation	\$ 45,108,157	\$ 46,061,664
Adjusted Appropriation	\$ 41,765,642	\$ 38,565,127
Difference	(\$ 3,342,515)	(\$ 7,496,537)
Percentage Change	(7.4%)	(16.3%)

In order to reduce its GRF expenditures, the Commission took numerous actions that cut payroll and maintenance costs and delayed equipment purchases. Perhaps most notably, the Commission reduced the size of its payroll, largely through attrition and a hiring freeze. Around 20 of what the Commission refers to as "line attorneys" have left in the last two years or so, and just five of those full-time staff attorneys have been replaced. Other specific actions taken included screening and limiting collect telephone calls

from prison inmates, consolidating rented office space, limiting travel, and reducing its fleet of vehicles by two.

FY 2004-2005 BIENNIUM ENACTED GRF BUDGET

The total amount of annual GRF funding appropriated to the Commission for the FY 2004-2005 biennium represents what can, perhaps at best, be termed a “no growth” budget, despite the apparent increase in annual GRF funding appropriated in each of FYs 2004 and 2005 relative to the Commission’s actual total FY 2003 GRF expenditures. To make the comparison more explicit, the Commission’s total FY 2004 GRF appropriation of \$39.9 million is \$2.4 million, or 6.3%, higher than the Commission’s total actual FY 2003 GRF expenditures. The Commission’s total FY 2005 GRF appropriation of \$41.9 million is in turn \$2.0 million, or 5.0%, higher than its total FY 2004 GRF appropriation.

While the above-noted appropriation levels for FYs 2004 and 2005 do appear to indicate growth over the Commission’s actual total FY 2003 expenditures, perhaps a clearer understanding of the Commission’s budget can be gleaned by taking a closer look at all seven of its GRF line items. Nearly all of the Commission’s GRF line items were funded in each of FYs 2004 and 2005 at levels below their actual FY 2003 GRF expenditures, thus providing no growth in the moneys that the Commission is using for internal management and the delivery of various legal services. The Commission has indicated that, as a result of these levels of GRF funding, it will have to further reduce annual operating expenditures by cutting more services and personnel.

The notable lone exception to this funding pattern occurred in the case of GRF line item 019-501, County Reimbursement – Non-Capital, which is used in its entirety to partially reimburse counties for indigent defense services and is not utilized to run the Commission or pay Commission staff. The line item’s FY 2004 GRF appropriation of \$30.6 million is \$2.6 million, or 9.3%, higher than its actual FY 2003 GRF expenditures. The line item’s FY 2005 GRF appropriation of \$32.6 million is in turn \$2.1 million, or 6.7%, higher than its total FY 2004 GRF appropriation. Thus, what appears to be growth in the Commission’s total GRF budget for FYs 2004 and 2005 is almost entirely a function of this one relatively large subsidy program. The remainder of the Commission’s GRF-funded services and programs were for all practical purposes appropriated less money than was disbursed for those services and programs in FY 2003.

VETOED PROVISION

A temporary law provision associated with the Commission’s FY 2004-2005 biennial budget froze, for the period from July 1, 2003, through June 30, 2005, the maximum amounts for which the state would reimburse counties for legal services for indigent criminal defendants at the level in effect on March 1, 2003. It appears that the practical fiscal effect of this provision would potentially have been to decrease the amount of state reimbursement that certain counties might otherwise have received for their annual indigent defense costs over the course of FYs 2004 and 2005 had all other conditions remained the same, while simultaneously increasing the portion of their annual indigent defense costs those certain counties might have been responsible to pay for had all other conditions remained the same. The Governor vetoed the provision.

BUDGET ISSUES

COUNTY-LEVEL INDIGENT DEFENSE SERVICES

The County Reimbursement program is responsible, under existing law, for providing up to 50% reimbursement to counties for the cost of providing attorneys to represent indigent persons who are charged with a crime or are appealing their conviction(s). The program also establishes standards (including indigence), guidelines, and maximum fees for state reimbursement of county-level indigent defense services, and monitors county compliance with those standards.

In its original budget submission to the Office of Budget and Management (OBM), the Commission requested a core funding level that would have reimbursed counties at the rates of 27% in FY 2004 and 25% in FY 2005. The total amounts requested for county reimbursement were below the level needed to reach the full 50% reimbursement rate target in permanent law because these amounts would have exceeded the maximum funding allowable within the Commission's budget cap as set by OBM. The Commission also requested supplemental GRF funding that was projected to get the county reimbursement rate up to 50%.

The level of GRF funding contained in the FY 2004-2005 biennial budget is expected to allow the Commission to realize an annual county reimbursement rate in the range of 33%. The Commission has calculated that it would need additional funding in the amount of approximately \$16.7 million in FY 2004 and \$17.8 million in FY 2005 to approach the 50% annual reimbursement rate target.

That said, it is difficult to predict an exact reimbursement rate since the cost to counties for providing indigent defense services is not a stable variable. In fact, over recent years the cost of indigent defense services has been increasing. The rising legal costs are primarily the result of legislation enacted over the past few years, which create new sentencing procedures and other due process of law requirements that increase the amount of time spent on each case. While the Commission has raised the maximum rates for attorney reimbursement, this remains a less proximate cause of increased costs, as counties are not required to pay the maximum rates to local attorneys providing indigent defense services. The Commission only sets the maximum rate; counties only have to pay what they can afford.

STATE LEGAL DEFENSE SERVICES

The Commission's State Legal Defense Services program series provides legal representation to indigent adults, juveniles, and incarcerated individuals in all courts when the United States Constitution requires representation, or when it is requested by the court, the county or joint county public defender, or an inmate. Most legal matters in which the state provides direct representation involve appeals or death penalty cases. Indigent defense for most other cases is provided by local public defenders.

The State Legal Defense Services program series is financed primarily by the Commission's GRF line item 019-401, State Legal Defense Services. The amounts appropriated for line item 019-401 pursuant to the FY 2004-2005 enacted biennial budget are less than what the Commission calculated the future cost of providing its FY 2003 level of state legal defense services by roughly \$650,000 in FY 2004 and \$1.25 million in FY 2005. Approximately 80% of the line item's annual appropriation is allocated for employee salaries and fringe benefits. Presumably, the Commission will have to cutback or constrain the amount of spending that it had planned to allocate from this line item for personal services, purchased personal service contracts, maintenance, and equipment. This could be accomplished by delaying

purchases, holding vacant staff positions open, shifting necessary expenditures to other line items, or some mix of these fiscal strategies.

As a result of staff reductions, including “line” attorneys, and an apparent ongoing hiring freeze, the remaining legal staff will have to carry heavy caseloads. From the Commission’s perspective, this raises at least two troubling prospects: (1) where appropriate, raising the bar of admissibility, that is, the criteria used to decide whether the Commission will take a case, and by doing so, serving fewer clients, and (2) the possibility that the availability and quality of the legal services provided will decline.

For example, it appears that the Commission will eliminate its Parole Revocation Program. Under the program, the Office of the Ohio Public Defender provides legal representation to persons charged with violating parole or provisions of post release control. In FY 2002, the Commission provided representation at parole revocation hearings in approximately 4,300 cases. If the program were eliminated, the annual savings to the Commission is estimated at about \$300,000.

It also appeared at the outset of legislative deliberations on the FY 2004-2005 biennial budget that the Commission’s Juvenile Legal Assistance program was in jeopardy due to the limited amount of funding expected to be appropriated for the State Legal Defense Services program series. A temporary law provision contained in the enacted version of the FY 2004-2005 biennial budget, however, ensures that the Juvenile Legal Assistance program will continue in some form. The provision earmarked at least \$250,000 of the amount appropriated to the Commission’s GRF line item 019-401 in each of FYs 2004 and 2005 for the purpose of providing legal services and assistance to juveniles.

The Commission is currently negotiating with the Department of Youth Services (DYS) to reestablish a juvenile legal services agreement that would be funded by using the \$250,000 earmarked annually for the purpose of providing legal services and assistance to juveniles. Under a prior interdepartmental agreement that ended in July 2001, the Commission provided legal assistance to juveniles placed in DYS institutions so that juveniles could gain access to the courts for appeals. The Department provided the funding for the delivery of those juvenile legal assistance services. The prior interdepartmental agreement was established by the state in FY 1994 in response to a decision by the U.S. Court of Appeals for the Sixth Circuit in the case of *John L. v. Adams* holding that juveniles have a constitutional right of access to the courts through attorneys provided by the state.

PUBLIC DEFENDER ADMINISTRATION

The Commission’s Public Defender Administration program series provides services necessary for continued operations that are common to most state agencies, including fiscal and accounting, personnel and training, computer information systems, and general office services, such as purchasing, inventory, records management, fleet, and delivery. In addition, the administrative component handles matters specifically mandated in Chapter 120. of the Revised Code, which also includes collecting reimbursements from counties, processing reimbursements paid to counties, producing educational seminars and conferences, and maintaining a library.

For its Public Defender Administration program series, the Commission requested GRF and non-GRF funding sufficient to continue providing its FY 2003 level of services in each of FYs 2004 and 2005. The Commission received less funding than it calculated would be necessary to continue FY 2003 service levels by around \$300,000 in FY 2004 and by around \$400,000 in FY 2005. According to the Commission, the enacted FY 2004-2005 biennial budget will not support the current number of staff and related maintenance and equipment costs associated with the Public Defender Administration program. In response, the Commission has already started to eliminate full-time staff positions. Additionally, a

planned upgrade of the Commission's desktop computers, servers, and software will be delayed indefinitely.

CIVIL LEGAL SERVICES

The Ohio Legal Assistance Foundation (OLAF) is a non-profit entity, created by statute, and charged with administering state funds for Ohio's legal aid societies. The Foundation, established by Am. Sub. H.B. 152 of the 120th General Assembly, effective July 1993, develops financial support and solicits financial contributions for use in providing assistance to Ohio's legal aid societies. Moneys deposited in Fund 574 are passed through the Commission to the Foundation. The Foundation then administers payments to non-profit legal aid societies that provide legal representation to indigent persons in civil cases. These payments are distributed to legal aid societies throughout the state pursuant to a statutory formula based on poverty population. Every county is served by one or more legal aid societies.

The enacted FY 2004-2005 biennial budget fully funded the Commission's requested annual appropriation levels for the Civil Legal Services program series (Fund 574). This essentially means that \$13.6 million in both FY 2004 and FY 2005 will be allocated for distribution to the state's legal aid societies. The remaining portion of each fiscal year's appropriation will be allocated to cover administrative costs. Pursuant to permanent law, 4.5% of the moneys in the fund will be reserved for the Foundation for actual and reasonable costs in administering the program. This amounts to \$643,756 in FY 2004 and \$643,761 in FY 2005. In addition, another \$15,000 in each fiscal year will be charged as administrative costs borne by the Commission. 

FY 2004 - 2005 Final Appropriation Amounts

All Fund Group

Line Item Detail by Agency

FY 2001: *FY 2002:* *FY 2003:* **FY 2004** *% Change* **FY 2005** *% Change*
Appropriations: *Appropriations:* *Appropriations:* *2003 to 2004:* *Appropriations:* *2004 to 2005:*

Report For: Main Operating Appropriations Bill

Version: Enacted

PUB Public Defender Commission, Ohio

GRF	019-321	Public Defender Administration	\$ 1,706,534	\$ 1,647,604	\$1,470,944	\$ 1,430,057	-2.78%	\$ 1,351,494	-5.49%
GRF	019-401	State Legal Defense Services	\$ 6,612,220	\$ 6,389,591	\$6,042,344	\$ 5,974,780	-1.12%	\$ 5,943,572	-0.52%
GRF	019-403	Multi-County: State Share	\$ 1,168,604	\$ 1,071,734	\$924,261	\$ 917,668	-0.71%	\$ 930,894	1.44%
GRF	019-404	Trumbull County - State Share	\$ 396,577	\$ 352,951	\$309,523	\$ 299,546	-3.22%	\$ 308,450	2.97%
GRF	019-405	Training Account	\$ 44,200	\$ 37,075	\$34,250	\$ 33,323	-2.71%	\$ 33,323	0.00%
GRF	019-501	County Reimbursement - Non-Capital	\$ 33,975,744	\$ 31,320,936	\$27,961,935	\$ 30,567,240	9.32%	\$ 32,630,070	6.75%
GRF	019-503	County Reimbursement - Capital Case	\$ 874,837	\$ 866,520	\$809,901	\$ 693,000	-14.43%	\$ 726,000	4.76%
General Revenue Fund Total			\$ 44,778,716	\$ 41,686,412	\$ 37,553,158	\$ 39,915,614	6.29%	\$ 41,923,803	5.03%
101	019-602	Inmate Legal Assistance	\$ 59,119	\$ 55,895	\$27,706	\$ 52,698	90.20%	\$ 53,086	0.74%
406	019-603	Training and Publications	---	---	\$0	\$ 16,000	N/A	\$ 16,000	0.00%
407	019-604	County Representation	\$ 130,061	\$ 202,594	\$184,716	\$ 255,789	38.48%	\$ 259,139	1.31%
408	019-605	Client Payment	\$ 133,620	\$ 316,612	\$589,370	\$ 285,533	-51.55%	\$ 285,533	0.00%
101	019-607	Juvenile Legal Assistance	\$ 395,368	\$ 49,231	\$0	\$ 0	N/A	\$ 0	N/A
General Services Fund Group Total			\$ 718,168	\$ 624,332	\$ 801,792	\$ 610,020	-23.92%	\$ 613,758	0.61%
3S8	019-608	Federal Representation	\$ 489,584	\$ 681,617	\$422,392	\$ 351,428	-16.80%	\$ 355,950	1.29%
3U7	019-614	Juvenile JAIBG Grant	\$ 68,171	\$ 31,667	\$0	\$ 0	N/A	\$ 0	N/A
3U8	019-615	Juvenile Challenge Grant	\$ 45,422	\$ 50,623	\$17,117	\$ 0	-100.00%	\$ 0	N/A
Federal Special Revenue Fund Group Total			\$ 603,177	\$ 763,907	\$ 439,509	\$ 351,428	-20.04%	\$ 355,950	1.29%
4C7	019-601	Multi-County: County Share	\$ 1,324,707	\$ 1,455,745	\$1,651,822	\$ 1,923,780	16.46%	\$ 1,991,506	3.52%
574	019-606	Legal Services Corporation	\$ 13,884,221	\$ 14,815,127	\$13,539,334	\$ 14,305,700	5.66%	\$ 14,305,800	0.00%
4X7	019-610	Trumbull County - County Share	\$ 449,339	\$ 501,157	\$549,787	\$ 624,841	13.65%	\$ 658,764	5.43%
State Special Revenue Fund Group Total			\$ 15,658,268	\$ 16,772,029	\$ 15,740,943	\$ 16,854,321	7.07%	\$ 16,956,070	0.60%
Public Defender Commission, Ohio Total			\$ 61,758,329	\$ 59,846,679	\$ 54,535,402	\$ 57,731,383	5.86%	\$ 59,849,581	3.67%