

# Ohio Public Defender Commission

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- Indigent defense reimbursement rate likely to be less than 30%
- Application fee and billing practice changes to offset GRF cuts
- Civil filing fee increase to assist Legal Aid Fund

## OVERVIEW

### Duties and Responsibilities

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 that person in criminal court. The Commission itself consists of nine appointed members. The Governor appoints five of the members, including the chair. The Supreme Court of Ohio appoints the other four members. To foster a nonpartisan structure, no more than five Commission members can be from one of the two major political parties. The Commission appoints a state public defender that maintains and administers the Office of the Ohio Public Defender. The Commission and the Office of the Public Defender share a common state budget (hereinafter referred to as the Public Defender).

Arguably, from a fiscal perspective, the Public Defender's most significant role is as administrator of the subsidy program that partially reimburses counties for indigent defense expenditures related to the operation of local public defender offices or the use of appointed counsel. Other notable Public Defender activities include: (1) providing legal services to inmates at the state's correctional facilities, trial level representation in some capital cases, and appellate and post-appeals representation in capital and noncapital cases, and (2) acting as a conduit to pass funds to the Ohio Legal Assistance Foundation (OLAF) for the purpose of providing financial assistance to legal aid societies throughout the state.

### County Indigent Defense Services Delivery Systems

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, and (5) contracting with a nonprofit corporation. A county may use one or any combination of these options, and, in point of fact, most opt to utilize county public defender offices or appointed counsel systems.

**Agency in Brief**

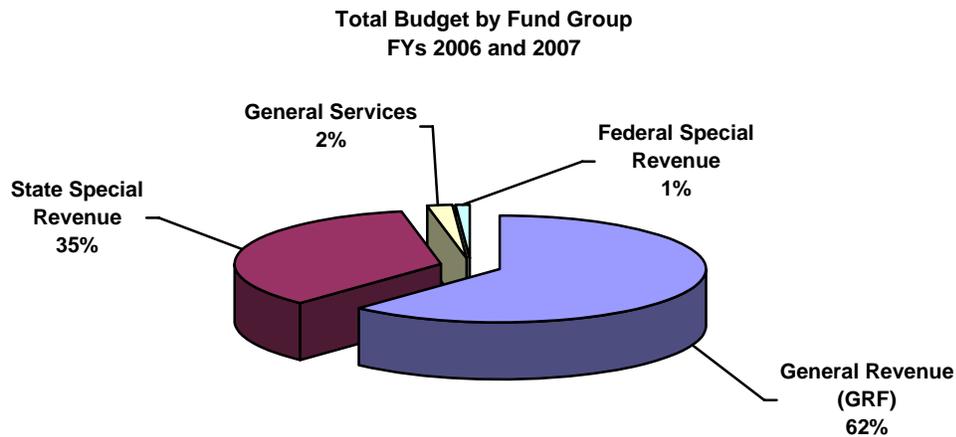
The statutory responsibilities performed by the Public Defender are financed primarily through the GRF. Also of note is the fact that approximately 25% of the Public Defender's total annual budget has been used to provide non-GRF support to legal aid societies around the state through the Ohio Legal Assistance Foundation. The following table selectively summarizes Public Defender appropriations and staffing information.

<b>Public Defender In Brief</b>					
<b>Number of Employees*</b>	<b>Total Appropriations-All Funds</b>		<b>GRF Appropriations</b>		<b>Appropriation Bill(s)</b>
	<b>2006</b>	<b>2007</b>	<b>2006</b>	<b>2007</b>	
118	\$59.06 million	\$64.02 million	\$38.15 million	\$38.08 million	Am. Sub. H.B. 66

\*Employee count obtained from the Department of Administrative Services (DAS) payroll reports as of June 2005.

**FYs 2006-2007 Expense by Fund Summary**

The pie chart immediately below shows total Public Defender appropriations (FYs 2006 and 2007) by fund group. This information is shown for both the GRF and all other funds.



**Civil Case Filing Fees**

The enacted budget provides for an increase in the surcharge on civil actions not in a small claims division (from \$15 to \$26) and on civil actions in a small claims division (from \$7 to \$11) that are used for the charitable purpose of providing financial assistance to legal aid societies, and adds a \$26 fee on name change, guardianship, adoption proceedings, and decedent estate proceedings to be used for the same purpose. The enacted budget requires 4% of the funds collected be deposited in the state treasury to the credit of the newly enacted Civil Case Filing Fee Fund (Fund 5CX) to be used by the Public Defender for the purpose of appointing assistant public defenders and for providing other personnel, equipment, and facilities necessary for operation of the Public Defender, and requires the remainder of the funds collected (96%) be deposited in the state treasury to the credit of the existing Legal Aid Fund (Fund 574).

LSC fiscal staff estimates that this existing locally collected state filing fee revenue stream will potentially jump from \$7.7 million to around \$14.7 million annually, an increase of \$7.0 million per year. Of the total collected annually, Public Defender fiscal staff projects that the Legal Aid Fund will receive \$14.1 million annually, an increase of \$6.4 million per year relative to current law, and the Civil Case Filing Fee Fund will receive around \$342,800 in FY 2006 and \$588,000 in FY 2007. The Public Defender's fiscal staff has indicated that the money deposited to the credit of Fund 5CX will be used to: (1) increase the salaries of the Public Defender's attorneys to better reflect the higher average salary paid to attorneys in comparable legal positions in other state agencies, and (2) if possible, hire back some of the assistant public defenders that have departed in recent years.

### **Indigent Defense Application Fee**

The enacted budget contains a permanent law provision that will generate revenue from a nonrefundable \$25 indigent defense application fee. Of this locally collected fee, 20% is to be deposited in the state treasury to the credit of the existing Client Payment Fund (Fund 408). The Public Defender's fiscal staff estimates that, in FYs 2006 and 2007, \$448,000 and \$477,000, respectively, will be generated for deposit to the credit of Fund 408. The fiscal staff has also indicated that this money will be used to support: (1) personnel that process county reimbursement claims, (2) prison legal services activities, and (3) an information technology plan initiative to develop a web-based application for reimbursing counties for their indigent defense costs.

### **County Representation Billing Rate**

The enacted budget contains a provision in permanent law that allows the Public Defender to bill counties for services based on the statewide reimbursement rate. As one of the five statutory mechanisms for the delivery of indigent defense services, a state public defender can be appointed by a court, or requested by a county public defender, to provide representation in any case, particularly when there is no locally available qualified counsel. When appointed in such matters, the Public Defender is required to bill a county 50% of the actual cost of the case, which is based on the original intention that the state and counties share equally in the cost of providing indigent defense. Any funds collected from counties through the billing process are credited to the Public Defender's County Representation Fund (Fund 407).

This permanent law provision requires counties to pay the same percentage share whether they appoint a state public defender to a case or utilize one of the other local mechanisms for providing indigent defense services. This provision is expected to generate approximately \$60,000 in additional revenues to the state in each of FYs 2006 and 2007. This change also allows the Public Defender to bill counties for 100% of the cost for mitigation, investigation, experts, and expenses, and then allows the counties to seek reimbursement back from the state at the current reimbursement rate.

### **Vetoed Provisions**

The Public Defender is not directly affected by any of the items contained in Am. Sub. H.B. 66 that were vetoed by the Governor.

## ANALYSIS OF THE ENACTED BUDGET

What follows is LSC fiscal staff's analysis of the Public Defender's enacted biennial budget covering FYs 2006 and 2007. The presentation of this analysis is organized around the following four program series.

- **Program Series 1: State Legal Defense Services**
- **Program Series 2: Indigent Defense Reimbursement**
- **Program Series 3: Ohio Legal Assistance Foundation**
- **Program Series 4: Program Management**

### Program Series 1

### State Legal Defense Services

**Purpose:** To provide legal representation and services to indigent adults, juveniles, and incarcerated individuals in state and federal courts when Ohio law, the Ohio Constitution, or the U.S. Constitution requires representation.

The following table shows the line items that are used to fund the State Legal Defense Services program series, as well as the enacted funding levels.

Fund	ALI	Title	FY 2006	FY 2007
<b>General Revenue Fund</b>				
GRF	019-321	Public Defender Administration	\$450	\$450
GRF	019-401	State Legal Defense Services	\$5,569,715	\$5,526,364
<b>General Revenue Fund Subtotal</b>			<b>\$5,570,165</b>	<b>\$5,526,814</b>
<b>General Services Fund</b>				
101	019-602	Inmate Legal Assistance	\$53,086	\$32,338
407	109-604	County Representation	\$186,146	\$188,810
408	019-605	Client Payments	\$91,389	\$308,107
<b>General Services Fund Subtotal</b>			<b>\$330,621</b>	<b>\$529,255</b>
<b>Federal Special Revenue Fund</b>				
3S8	019-608	Federal Representation	\$380,484	\$315,287
<b>Federal Special Revenue Fund Subtotal</b>			<b>\$380,484</b>	<b>\$315,287</b>
<b>State Special Revenue Fund</b>				
5CX	019-617	Civil Case Filing Fee	\$417,600	\$556,800
<b>State Special Revenue Fund Subtotal</b>			<b>\$417,600</b>	<b>\$556,800</b>
<b>Total Funding: State Legal Defense Services</b>			<b>\$6,698,870</b>	<b>\$6,928,156</b>

The State Legal Defense Services program series consists of the five programs discussed below.

#### **Program 1: Appeals and Postconviction Representation**

**Program Description:** This program has nine staff attorneys and three supervising attorneys who provide legal representation in over 800 cases per year in state and federal courts to indigent persons who claim they are unlawfully incarcerated.

**Funding Source:** GRF

**Implication of the Enacted Budget:** Although the enacted budget fully funds this program, with the ongoing problem of attorney attrition, the remaining attorneys will have difficulty maintaining the same level of legal services in FYs 2006 and 2007. Since 2001, the Public Defender has lost a total of 18 attorneys, some of who worked within this program. The remaining attorneys and support staff have faced increasing workloads, and more clients have faced longer delays in the delivery of services or received no services at all.

### **Program 2: Death Penalty Representation**

**Program Description:** The purpose of this program is to: (1) provide competent legal counsel to indigent persons under the sentence of death, (2) assist private appointed attorneys in death penalty cases, and (3) support training seminars on death penalty law to help ensure that the state bar meets requirements imposed under Ohio Supreme Court Superintendence Rule 20.

**Funding Sources:** (1) GRF, (2) payments received from counties for 50% of the actual cost of legal representation when the Public Defender is designated by a court or requested by a county public defender or joint county public defender to provide legal representation of an indigent person, (3) all moneys due the state for reimbursement for indigent defense legal services where defendants are ordered to pay back all or part of the costs of the representation, and (4) partial reimbursement payments received from federal courts as a result of federal courts appointing the Public Defender to provide legal representation in federal habeas corpus death penalty cases

**Implication of the Enacted Budget:** The enacted budget provides funds that will allow the continuation of the program's FY 2005 service levels, including 17 attorneys available to work on capital appeals, postconviction, and habeas corpus cases, and three attorneys that focus on capital trial cases. Public Defender staff has noted that the demand for these services may increase slightly as prior amendments to the Ohio Constitution and the postconviction statute have increased the pace of capital cases moving into federal habeas corpus, and that this quickening pace creates a need for more legal counsel in complex habeas litigation, a need the Public Defender will likely be called on to fill.

### **Program 3: Intake and Prison Legal Services**

**Program Description:** Three organizational units perform the work associated with this program as follows: (1) Intake, which fields calls, handles routine questions, and receives initial requests for legal representation, (2) Records Management, which opens new case files, gathers relevant documents, delivers the files to supervisors for attorney assignment, and generates statistical reports, and (3) Prison Legal Services, which provides legal advice to inmates at the three reception centers in Ohio's prison system.

**Funding Sources:** (1) GRF, (2) all moneys due the state for reimbursement for indigent defense legal services where defendants are ordered to pay back all or part of the costs of the representation, and (3) quarterly legal services payments transferred from the Department of Rehabilitation and Correction

**Implication of the Enacted Budget:** It would appear that, all other conditions remaining the same, the enacted budget provides sufficient funding for the Public Defender to continue delivering the FY 2005 level of intake and prison legal services in FYs 2006 and 2007.

### **Program 4: Juvenile Legal Assistance**

**Program Description:** The purpose of this program is to: (1) provide legal assistance and representation to juveniles who have been committed to the Department of Youth Service, and (2) coordinate and provide training to defense attorneys who handle juvenile work and provide legislative advocacy on right to counsel issues and other substantive issues involving children in the juvenile justice system.

**Funding Source:** GRF

**Implication of the Enacted Budget:** The enacted budget fully funds the Public Defender's requirements to continue delivering the FY 2005 level of juvenile legal assistance services in FYs 2006 and 2007.

### **Program 5: Legal Resource Center**

**Program Description:** The purpose of this program is to support the Public Defender's Law Library required pursuant to section 120.04(B)(1) of the Revised Code.

**Funding Source:** GRF

**Implication of the Enacted Budget:** The enacted budget fully funds the Public Defender's requirements to continue the Law Library's FY 2005 level of services in FYs 2006 and 2007.

## **Program Series 2**

## **Indigent Defense Reimbursement**

**Purpose:** To provide, facilitate, and improve the delivery of criminal defense services to indigent persons accused of crimes handled by common pleas, municipal, and county courts.

The following table shows the line items that are used to fund the Indigent Defense Reimbursement program series, as well as the enacted funding levels.

<b>Fund</b>	<b>ALI</b>	<b>Title</b>	<b>FY 2006</b>	<b>FY 2007</b>
<b>General Revenue Fund</b>				
GRF	019-403	Multi-County: State Share	\$823,620	\$823,620
GRF	019-404	Trumbull County-State Share	\$256,380	\$256,380
GRF	019-405	Training Account	\$31,324	\$31,324
GRF	019-501	County Reimbursement	\$30,000,000	\$30,000,000
<b>General Revenue Fund Subtotal</b>			<b>\$31,111,324</b>	<b>\$31,111,324</b>
<b>State Special Revenue Fund</b>				
4C7	019-601	Multi-County: County Share	\$2,028,309	\$2,104,367
4X7	019-610	Trumbull County-County Share	\$642,106	\$665,860
<b>State Special Revenue Fund Subtotal</b>			<b>\$2,670,415</b>	<b>\$2,770,227</b>
<b>Total Funding: Indigent Defense Reimbursement</b>			<b>\$33,781,739</b>	<b>\$33,881,551</b>

The Indigent Defense Reimbursement program series consists of the two programs discussed below.

### **Program 1: Indigent Defense Reimbursement**

**Program Description:** Under this program, the Public Defender most notably subsidizes counties for the cost of providing counsel to indigent persons in criminal and juvenile matters pursuant to the requirements of sections 120.18, 120.28, and 120.33 through 120.35 of the Revised Code. The Revised Code stipulates that the Public Defender shall reimburse counties 50% of the costs of operating their local indigent defense systems, unless the legislature appropriates less funding than needed to reimburse at 50%, in which case each county receives a reduced share.

The program also funds the contractual arrangement under which a county reimburses the Public Defender for the provision of that county's required local indigent defense services as an alternative to traditional appointed counsel or county public defender offices. The Public Defender currently maintains two operations in support of such a contractual arrangement: the Trumbull County Branch Office and the Multi-County Branch Office. The former office, established in FY 1985, provides local indigent defense services for Trumbull County. The latter office, established in January 1991, provides local indigent defense services to the following ten counties in the south and southeastern part of Ohio: Adams, Athens, Brown, Fayette, Jackson, Meigs, Pickaway, Pike, Ross, and Washington.

**Funding Sources:** (1) GRF, (2) payments from ten counties in south and southeastern Ohio for their portion of the costs of operating the Public Defender's Multi-County Branch Office, and (3) payments from Trumbull County for their portion of the costs of operating the Public Defender's Trumbull County Branch Office

**Implication of the Enacted Budget:** The level of funding in the enacted budget is not expected to permit the Public Defender to reimburse counties at the current FY 2005 level of 31% of their annual cost of providing indigent defense legal services. The enacted level of funding corresponds to a reimbursement rate of about 28% in FY 2006 and 27% in FY 2007.

The Public Defender's fiscal staff has calculated that it would need additional GRF funding in the amount of \$25,413,500 in FY 2006 and \$28,843,000 in FY 2007 to reimburse counties for the full 50% of their annual cost of providing indigent defense legal services. It is likely that the revenues that counties will retain from the new \$25 indigent defense application fee will help offset a lower state reimbursement rate. The additional fee revenue retained by counties statewide, estimated at just under \$2 million per year, would be roughly equivalent to an increase in the reimbursement rate of between one and two percentage points.

### **Program 2: Pro Bono Training Program**

**Program Description:** Under the Pro Bono Training program, the Public Defender contracts with private and nonprofit training companies to provide continuing legal education (CLE) certified seminars at no cost to attorneys who practice criminal indigent defense law and provide one pro bono (for free) case for every seminar attended. The seminar companies presently charge the Public Defender \$125 per attorney for a regular one-day seminar and \$250 per attorney for the two-day Rule 20 seminars.

**Funding Source:** GRF

**Implication of the Enacted Budget:** The enacted budget will allow for approximately the same number of attorneys to be trained in FYs 2006 and 2007 as were trained in FY 2005, which assumes that neither the demand nor the cost will significantly increase over the course of the next two years.

### Program Series 3

### Ohio Legal Assistance Foundation

**Purpose:** To administer and fund the state's civil legal services program.

The following table shows the single line item that is used to fund the Ohio Legal Assistance Foundation program series, as well as the enacted funding levels.

Fund	ALI	Title	FY 2005	FY 2006
<b>State Special Revenue Fund</b>				
574	019-606	Legal Services Corporation	\$16,569,282	\$21,294,190
<b>State Special Revenue Fund Subtotal</b>			<b>\$16,569,282</b>	<b>\$21,294,190</b>
<b>Total Funding: Ohio Legal Assistance Foundation</b>			<b>\$16,569,282</b>	<b>\$21,294,190</b>

The Ohio Legal Assistance Foundation program series only contains one program as described below.

#### Program 1: Ohio Legal Assistance Foundation

**Program Description:** The Ohio Legal Assistance Foundation (OLAF) is a nonprofit 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, receives moneys from four dedicated funding sources that are passed through the Public Defender to the Foundation. These moneys are then 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.

**Funding Source:** (1) Interest-bearing trust accounts established and maintained by attorneys, law firms, or legal professional associations pursuant to sections 4705.09 and 4705.10 of the Revised Code, (2) interest-bearing trust accounts established and maintained by title insurance agents or title insurance companies pursuant to section 3953.231 of the Revised Code, (3) additional filing fees collected by municipal, county, and common pleas courts on each new civil action or proceeding pursuant to sections 1901.26, 1907.24, and 2303.201 of the Revised Code, and (4) gifts, bequests, donations, contributions, and income from investments

**Implication of the Enacted Budget:** The enacted budget fully funds the Ohio Legal Assistance Foundation program series for FYs 2006 and 2007, with most of the money being distributed to the state's legal aid societies. The remaining portion of each fiscal year's appropriation for line item 019-606, Legal Services Corporation, will be allocated to cover administrative costs as follows: (1) pursuant to permanent law, 4.5% (\$745,618 in FY 2006 and \$958,239 in FY 2007) will be reserved for the Foundation's actual, reasonable costs in administering the program, and (2) \$5,718 in FY 2006 and \$5,810 in FY 2007 will be charged as administrative costs borne by the Public Defender for salaries and telephone expenses associated with managing Foundation activities.

**Program Series 4****Program Management**

**Purpose:** To provide quality support services that are responsive to the Public Defender's needs, goals, and objectives.

The following table shows the line items that are used to fund the Program Management program series, as well as the enacted funding levels.

Fund	ALI	Title	FY 2005	FY 2006
<b>General Revenue Fund</b>				
GRF	019-321	Public Defender Administration	\$1,295,120	\$1,261,989
GRF	019-401	State Legal Defense Services	\$174,886	\$177,753
<b>General Revenue Fund Subtotal</b>			<b>\$1,470,006</b>	<b>\$1,439,742</b>
<b>State Special Revenue Fund</b>				
574	019-606	Legal Services Corporation	\$5,718	\$5,810
<b>State Special Revenue Fund Subtotal</b>			<b>\$5,718</b>	<b>\$5,810</b>
<b>General Services Fund</b>				
406	019-603	Training and Publications	\$16,000	\$16,000
408	019-605	Client Payments	\$522,638	\$453,999
<b>General Services Fund Subtotal</b>			<b>\$538,638</b>	<b>\$469,999</b>
<b>Total Funding: Program Management</b>			<b>\$2,014,362</b>	<b>\$1,915,551</b>

The Program Management program series only contains one program as described below.

**Program Management**

**Program Description:** This program encompasses the Public Defender's Administrative Division, which consists of the following six sections: Human Resources, Information Systems, Fiscal, Office Services, County Reimbursement, and the Legal Resource Center. Much of the Division provides the necessary services common to most state agencies, including fiscal and accounting, personnel and training, computer information systems, purchasing, fleet management, and delivery.

**Funding Source:** (1) GRF, (2) fees received by the Public Defender for conducting educational seminars, and from the sale of publications on topics concerning criminal law and procedure, (3) all moneys due the state for reimbursement for indigent defense legal services where defendants are ordered to pay back all or part of the costs of the representation, and (4) an amount the Public Defender is permitted to assess the Legal Aid Fund for the reasonable costs of administering the state's legal aid society law

**Implication of the Enacted Budget:** The enacted budget provides a program funding level that will largely be devoted toward maintaining FY 2005 levels of service in FYs 2006 and 2007.