

JUSTICE AND PUBLIC SAFETY

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According to the United States Supreme Court, indigent defense is a responsibility of the state. The state's assumption of full financial responsibility for indigent defense is a critical element of a more efficient and effective indigent defense system and a stronger working relationship between the state and its counties.

Counties recognize that Ohio strengthened the indigent defense system in the FY22/FY23 biennial budget by moving closer to fully funding the program. The state appropriated approximately \$336 million dollars in the most recent budget to fully reimburse counties for the costs of operating the indigent defense system in the state. The Office of the Ohio Public Defender estimated that this amount would result in a 100% reimbursement rate on July 1, 2021. That projection held true for FY 2022.

In FY 2023, the workforce crisis forced many counties to increase appointed counsel rates, increase public defender salaries, and fund necessary public defender facility expenses in order to retain staff and continue effective operation of the program. These unanticipated increases in cost resulted in an approximate 90% reimbursement rate in FY 2023.

CCAO asks that the state take the final step in this biennial budget to provide full funding for indigent defense reimbursement. Alternatively, the state should provide an option to allow the state public defender to take over operation of the indigent defense program if a county chooses to contract with the state for the operation of the program. Either way, now is the time for the state to finally relieve counties of this state-mandated funding obligation and return it to where it rightfully belongs: the state.

Historical Perspective

Initially in response to *Gideon*, Ohio opted to require counties to provide indigent defense, with the state reimbursing counties for 50% of the cost of delivering this constitutionally mandated service. The state funded its reimbursement by utilizing revenue deposited into the state general fund from a statewide court cost established by the General Assembly. However, in 1979, when the revenue from the court cost became less than the amount required to provide the state's 50% reimbursement, the state modified its funding commitment by

establishing the concept of "proportional reduction." Under this concept the state simply appropriated an amount for reimbursement and then proportionally reduced the reimbursement rate to counties.

THE STATE SHOULD ASSUME COMPLETE RESPONSIBILITY FOR FUNDING INDIGENT DEFENSE.

In 2008, the state created the Indigent Defense Support Fund (IDSF) to develop non-general revenue fund (non-GRF) resources to reduce the reliance on state general fund revenues to pay for reimbursement. Certain fees, fines and surcharges were established and earmarked for the IDSF so that these non-GRF sources could be used for reimbursement.

Historical data shows that the state reimbursement rate to counties averaged 40% between 2010 and 2019 and the record low reimbursement rate of 26.1% occurred in FY 2009. During this same ten-year period, while the counties spent \$795 million on indigent defense that was not reimbursed by the state, the state reimbursed \$490 million of which only 30% was state general fund revenue and the remaining 70% was non-GRF money from the IDSF.

Two other key factors burden the counties' financial obligations to fund indigent defense. Currently 83% of the non-GRF revenues that are deposited into the IDSF are allocated to county reimbursement. Six years ago, 88% was allocated to reimbursement.

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This five percent reallocation diverts approximately \$6.5 million each year from county reimbursement to support the State Public Defender’s Office operations. Furthermore, the IDSF receipts continue to underperform their three-year historic trend line upon which the budget forecast for fund receipts is based. This underperformance impacts total revenue available for reimbursement and leads to a further reduction in the reimbursement percentage to counties. The other factor is the Capital Case Attorney Fee Council, comprised of five sitting judges of the courts of appeals, has the authority to establish the rate counties must pay for lawyers who represent defendants in capital (death penalty) cases. The Fee Council has established the rate at \$125 per hour, which is a significant increase from the \$60 to \$75 per hour rate most counties were paying prior to the creation of the Fee Council a few years ago.

THE STATE SHOULD RECOGNIZE THE IMPORTANCE OF COUNTY JAILS IN THE CRIMINAL JUSTICE SYSTEM AND STRENGTHEN THE STATE-COUNTY PARTNERSHIP THROUGH THE FOLLOWING POLICIES:

STATE CAPITAL FUNDING FOR COUNTY JAILS SHOULD BE MAINTAINED

The county jail is an integral part of the state’s criminal justice system. CCAO has expressed concern that in many instances county jails are unable to adequately perform their mission within the criminal justice system due to age and structural conditions. State capital funding for county jail construction and renovation is a major priority for counties. A 2019 survey conducted by the Buckeye State Sheriffs Association and CCAO projected a statewide cost of over \$1.3 billion for county jail construction and renovation costs.

Last session, the state included \$50 million for county jail construction and renovation in the state capital appropriations bill (H.B. 687). The H.B. 687 funding built upon a \$50 million appropriation in

S.B. 310 in the 133rd General Assembly. The S.B. 310 dollars were the first meaningful investment in county jails at the state level in nearly 20 years. As such, the funding requests from counties for jail construction projects far exceeded the \$50 million dollar allocation.

The excess demand for jail project funding is a result of the increased need for the sheer quantity and specific type of jail bed required to house Ohio’s jail population. The need for additional jail beds is driven by five key factors:

- overcrowding,
- facility age,
- rising felony populations,
- rising female prisoner populations, and
- increasing drug crime arrests.

Furthermore, the inmate population in county jails are changing and jails are required to provide services that exceed the design capabilities of the facility. This is due in part to the fact that 32 of our 90 county jails were opened prior to 1988. Two county jails date back to the 1880’s and one dates to 1800. When looking at recent construction or renovation activity, only nineteen county jail facilities have been opened since 2000. The “ageing” of county jail facilities beyond their useful life presents real problems for the safety or not only the staff, but the inmates as well. Many jails are physically unable to provide the space to provide programming to reduce recidivism or substance abuse and/or mental health treatment.

However, CCAO sincerely appreciates the recognition by the state of the challenges counties face in providing safe and secure county jail facilities. The funding contained in S.B. 310 and H.B. 687 improved the landscape of county jails in a variety of methods. The state funding allowed several counties to build a new jail facility by combining state and county funds, whereas other counties utilized the funding to replace failing locking systems in their existing facility. That being said, CCAO urges the state to view these prior appropriations as an initial investment in a long-term capital funding program to help counties manage the expensive task of updating and repairing the structural, mechanical,

and operating systems of county jails.

DRUG EPIDEMIC AND MENTAL HEALTH IMPACTS ON COUNTY JAILS

A county jail's primary mission is not to treat or house the mentally ill or addicted. Jails are not designed to be treatment facilities, and jail staff are neither envisioned nor trained to be treatment providers. The state must accept responsibility for the management and care for the mentally ill and addicted population.

The continued incarceration of mentally ill and addicted individuals in county jails places an undue burden of risk and of cost upon these facilities and is clearly outside the purpose for county jails. Jail employees are not trained to manage or treat individuals suffering from mental illness or addiction. The mentally ill or addicted population is at high risk for injuring themselves or others.

According to ODRC data, approximately one in three inmates are currently confined in a county jail due to a drug-related offense, with many of these individuals also suffering from mental illness. The health care costs for these individuals are excessive, and their housing in a jail threatens public safety by taking up scarce bed space that was designed for and should be used for housing real criminals.

An emphasis must be placed upon developing, improving and increasing programing and funding for:

- Access to mental health and addiction services for jail inmates to ensure their continuity of care.
- The statewide behavioral health triage program that provides regional centers where law enforcement can take individuals in custody or incarcerated who need immediate mental health crisis intervention or acute substance use disorder stabilization.
- Expanding the number of drugs covered by the highly successful Department of Mental Health and Addiction Services' reimbursement program for psychotropic drugs prescribed for county jail inmates.

ADOPT A RISK-BASED SYSTEM TO ESTABLISH BAIL FOR DEFENDANTS

CCAO urges the legislature to continue its deliberations on this subject and enact a risk-based system to establish bail for defendants, that allows for public safety to be considered as a factor of pre-trial release. This risk-based system should include a mandate that a validated risk assessment tool be used, allow flexibility in determining which assessment tool is used, and provide funding recognizing that the utilization of the system will require additional staff to carry out and administer the risk assessment program.

Bail refers to the process of releasing a defendant from jail with conditions that reasonably protect public safety and ensure the defendant will show up for court. Ohio law defines bail as security for the accused to appear in court (R.C. Section 2937.22). Usually there is a bond schedule established by the court for the various types of offenses, and if the individual can post the monetary amount required, they are released from jail. Risk of flight or the impact of the individual's release upon public safety, the true purposes for bail, are not taken into consideration under this methodology. If the individual can provide the money, they gain release from jail.

However, the ability to pay a bail bond is impossible for too many people. As a result, county jails house many pre-trial individuals who present no reasonable risk to the public safety but remain incarcerated simply because they don't have the money required to gain their release. Considering that over 60% of average daily jail populations are unsentenced individuals who are unable post bail, CCAO believes a risk-based system to establish bail would help reduce county jail population.

COVERAGE FOR MEDICAL COSTS OF UNSENTENCED JAIL INMATES

CCAO asks that the state encourage Congress to remove the so-called "inmate exception" that prevents payment of federal medical benefits for people in jail whether or not they have been convicted of a crime. Current federal benefits rules that must be followed by the states leave counties solely responsible for the medical expenses of jailed

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individuals. As a result, qualified individuals in jail are automatically stripped of their federal benefits before they have been convicted. This appears to be a direct contradiction of the basic presumption of innocence, which is the foundation of the American criminal justice system.

The state also could assist counties by amending its Medicaid plan to both continue eligibility and provide benefits for a Medicaid eligible individual during their incarceration in a county jail. While federal law prohibits federal reimbursement for medical services provided to incarcerated individuals, it does not prohibit the state from spending state dollars at the Medicaid rates for such services which, if paid, would help subsidize the county's cost.

STATE SUBSIDY FOR HOUSING CERTAIN PRISONERS IN COUNTY JAILS

State laws and policies have contributed to the significant increase in county jail population. State funds should be appropriated to reimburse counties for the costs of housing prisoners in county jails that are doing any of the following:

- Serving sentences for a felony conviction.
- Being held by the Adult Parole Authority pending a parole revocation hearing.
- Being incarcerated pursuant to the provisions of the Domestic Violence Preferred Arrest Law.
- Serving mandatory jail sentences under the state's OMVI laws.
- Prisoners who must be retained in the county jail because DRC is unable to receive them.

EMERGENCY 9-1-1 FUNDING AND MANAGEMENT

The Statewide Emergency Services Internet Protocol Network Steering Committee (ESINet Committee) is tasked with moving Ohio to a Next Generation 9-1-1 (NG9-1-1) system that supports digital communications and can leverage future advances in technology for emergency responders to effectively protect and efficiently respond to calls from the public for emergency assistance. The technology associated with this system is extremely expensive

and cannot be borne by counties alone. This system must be adequately funded to ensure that the public's expectations are met.

A universal device fee must be enacted

The ESINet Committee has recommended that a Universal Device Fee be established. A Universal Device Fee is a permanent, statewide, uniform monthly charge applied to all numbers/addresses capable of accessing 9-1-1 dedicated to funding Ohio's 9-1-1 system. The revenue from the monthly charge should be utilized to adequately support both the state's provision of ESINet and 9-1-1 services and local governments' public safety answering point (PSAP) operations centers.

CCAO supports this recommendation and concurs with the ESINet Committee's further recommendation that this fee should initially be established at 70 cents for the first two years and then for the next five years the ESINet Committee may annually adjust the fee to an amount not greater than 2 cents than the previous year's fee but the total fee cannot exceed 70 cents. This flexibility provided to the ESINet Committee is necessary to ensure that both the implementation of the NG9-1-1 system and county access and utilization of the new system can be adequately financed.

The universal device fee must support local PSAP operations

Funding allocated to the PSAP operations centers should support the acquisition of the necessary hardware, software, and technology upgrades and annual maintenance of the system; underwrite the costs of mandatory training requirements and regulatory compliance; and establish a reserve for funding the major system technology advances that will occur over time. The state should also consider providing specific incentives which assist counties in completing last mile connectivity; maintaining their Ohio Location Based Response System which provides address, street and location data; and effectively consolidating PSAPs.

Counties should manage PSAP operations

The State NG9-1-1 system and the PSAPs it supports will eventually replace the existing 9-1-1

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systems throughout the State. CCAO recommends that PSAP management become the responsibility of commissioners as a county department. CCAO recommends that all calls to 9-1-1 be received at a single centralized PSAP location within the county, complimented with appropriate redundancy, for dispatch to the public safety/service provider covering the area where the call originates.

There is also a need to clearly distinguish between the PSAP 9-1-1 call receipt function and the dispatch function and ensure that a political subdivision that provides dispatch services for another subdivision can contract for and fully recover their costs in providing that service.

ELIMINATION OF MARCS USER FEES

The state has committed a significant investment to upgrade the Multi-Agency Radio Communication System (MARCS) radio system to provide interoperability among local responders' communications equipment. One of the challenges to local governments wanting to utilize MARCS, however, is the cost-prohibitive monthly user fee the state currently charges local responders for use of the system.

The state budget has made grant funding available to rural fire departments to help them pay the monthly MARCS user fee. The current biennial budget provides GRF funding of \$2 million per year to subsidize \$10 of the \$20 monthly MARCS subscriber fees paid by political subdivisions during the FY 22/23 biennium.

Ultimately, in order to make the system a viable option for counties and other local governments' communication needs, the monthly MARCS user fee must be eliminated. For those political subdivisions that have negotiated equipment acquisition or sharing arrangements in order to reduce their user fee obligation, these agreements should be subject to renegotiation if the fee is permanently reduced or eliminated.

STATUTORY COURT COSTS

Clerk of court fees (R.C. Section 2303.20) were last increased in 1992, and probate court fees (R.C. Sections 2101.16 and 2101.17) have not

been increased since 1976. These fees help offset the cost of the operation of the clerk of courts office and probate court. CCAO asks that these fees be increased significantly to offset the gross depreciation in their value resulting from inflation.

MUNICIPAL CHARGING PATTERNS

CCAO must express its frustration regarding current municipal charging patterns. Presently, municipalities can choose whether to charge a misdemeanor criminal case under a local municipal ordinance or under the Ohio Revised Code. This decision holds great significance as it relates to whether it is the city or the county who will pay for the costs of detention, mental health evaluations and public defense expenses and which will benefit when fee or fine monies are collected. While municipalities are understandably authorized under their home rule authority to establish a criminal code and exercise police powers, this power should not extend to shifting costs to the state via counties by citing an individual under the Ohio Revised Code when the individual case offers no financial incentives for the municipality to prosecute the case under its municipal ordinance authority.

COMMISSIONERS USE OF OUTSIDE LEGAL COUNSEL

The board of commissioners may employ an attorney other than the prosecuting attorney to represent them on either a particular matter or on an annual basis. However, the total compensation paid in any year for outside counsel cannot exceed the total annual compensation of the county prosecuting attorney. CCAO asks that this artificial spending cap imposed by R.C. Section 309.09(C) be eliminated.

SHERIFF DEPUTY TRAINING REQUIREMENTS

Counties must receive complete reimbursement for all costs associated with any mandatory law enforcement continuing professional training required by the state. These costs include not only the costs for the actual training but also the officer in training's regular salary and the covering officer's salary at time and a half.

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COURT SYSTEM RESTRUCTURING AND MANAGEMENT

While CCAO recognizes and respects the court system as an independent third branch of government, several issues involving the judicial system are impacting counties' efforts to increase efficiency and contain costs.

- The current system of county and municipal courts is balkanized, functions inefficiently and ineffectively, and, consequently, costs local government more than it should to operate. A complete review and restructuring of the misdemeanor court system should take place.
- The state should begin moving toward the assumption of full responsibility for the operation and management of the common pleas court system in the state, thereby fostering a more collaborative and unified system.
- There is an increased incidence of courts demanding funding of budget requests which are neither pragmatic nor responsible, and that exceed funding parameters imposed upon other county officials and challenge resource allocation.
- A periodic review of the number of judgeships required in the various courts based upon population and caseloads should be undertaken.
- Consideration should be given to expanding the use of magistrates and magistrate authority as an alternative to creating a new judgeship due to docket pressures. In addition, the state should provide a similar level of funding for a magistrate's salary as is currently provided for a judgeship.

DRC COMMUNITY CORRECTIONS PROGRAMS

The Department of Rehabilitation and Corrections (DRC) and the Department of Mental Health and Addiction Services (MHAS) have begun to work cooperatively to develop and fund programs to support a continuum of community corrections programs. These programs provide drug and alcohol counseling and treatment and services for the mentally ill in the county jails. CCAO strongly



CORSA Risk Control Law Enforcement Consultant Steve Flory with Wood County Commissioner Craig LaHote and MILO Trainer Tom Meek at the Wood County Sheriff's Office

supports this collaboration and encourages a much greater level of reinvestment in the communities to support these goals.

The Department of Rehabilitation and Corrections' "Community Corrections Act" programs should continue to be used as the foundation upon which to build this infrastructure. These highly successful programs are developed through evidence-based analysis, and best practices models are funded through the Division of Parole and Community Services. Community Corrections Act (CCA) line items support felony prison diversion and misdemeanor jail diversion programs in the local communities.

Funding for these CCA programs should continue to be increased and new program options developed to support local communities as best practices become identified. Additional funding should be allocated specifically to county government through the CCA Jail diversion (407 line item) to provide funding to assist local government in providing treatment and services to those addicted to opiates and other illegal substances or experiencing a mental health disorder.

DYS JUVENILE JUSTICE FUNDING

Support for local juvenile justice programming has been ignored for over a decade. It is well past time for the state to significantly increase funding through the Department of Youth Services for juvenile detention services. RECLAIM Ohio and the Youth Services Grant (510 line item) are the

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major components for juvenile justice funding and absolutely are critical funding programs for Ohio's juvenile courts, accounting for approximately 33% of their operating budgets.

Annual RECLAIM Ohio funding has remained at approximately \$30 million per year since FY 10. The Youth Services Grant also continues to be flat funded, as it has been since FY 03, at \$18.6 million per year. Together, these line items have seen almost a 10% reduction in funding from the FY 02 appropriation levels.

Failure to fund these line items adequately will lead to increased commitments to DYS institutions because the resources will no longer be available locally to serve these youth in their communities.

COMMUNITY BASED CORRECTIONS FACILITIES

Community Based Corrections Facilities (CBCFs) are secure residential facilities that house individuals who have been diverted from the state's prison system in order to provide them with intensive programming and rehabilitation services that will lead them to choose not to reoffend. CBCFs are created by the common pleas courts through the establishment of a judicial advisory board and are managed by a local facility governing board comprised of individuals appointed by the judicial advisory board and the county commissioners of the member counties. CBCF funding is provided through grants administered by the Department of Rehabilitation and Correction. An expansion of the current funding would allow for the diversion of more individuals from prison into the CBCF programming.

State law limits the time an individual can stay in a CBCF to a period of six months or less. However, new research and empirical analysis suggests that programming objectives and results are more effective and successful if treatment is extended beyond six months. CCAO recommends that the legislature work with the Department of Rehabilitation and Correction to determine if state law should be amended to allow for a longer maximum stay in a CBCF and whether CBCF programming could effectively provide addiction and mental health rehabilitative services that would benefit the remediation of the opiate crisis.

STATE FUNDING OF THE LEADS SYSTEM

With the advent of the Statewide Emergency Services Internet Protocol Network (ESINet) Steering Committee, the administration of the state's Law Enforcement Automated Data System (LEADS) should be merged into the ESINet to eliminate the need for county contributions for maintaining the system and should provide a funding mechanism to local jurisdictions to cover the cost of hardware and software upgrades required by new technology applications.

PROSECUTION OF CRIMES OCCURRING ON STATE PROPERTY

The state should provide a biennial appropriation line item to pay 100% of the costs incurred by counties for prosecuting offenders who commit crimes at state institutions, such as state prisons, or on state-owned property.

VOLUNTEER FIRST RESPONDERS TRAINING

The number of hours required for a volunteer to become certified and maintain certification as a fire fighter or emergency medical service responder has become onerous. The state should reevaluate the training requirements.