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**Testimony of Timothy Young, State Public Defender
Office of the Ohio Public Defender
House Bill 59, Operating Budget Bill, FY 14-15**

**House Finance Committee, Transportation Subcommittee
February 27, 2013**

Chairman McGregor and members of the Transportation Subcommittee, my name is Tim Young, and I am the Director of the Office of the Ohio Public Defender. It is my pleasure to present to you our budget proposal for fiscal years 2014-2015, as included in Gov. Kasich's Executive Budget and House Bill 59.

Increased reimbursement to counties

The funding included in HB 59 will allow us to continue our existing operations at our central office and branch offices. For the past several biennia, we have successfully worked to increase funding dedicated to indigent defense and decrease our reliance on General Revenue Funds. This has allowed us to maintain our existing levels of central-office services and county reimbursement while decreasing our GRF dependency.

In HB 59, however, you will notice a 116.2% increase in our GRF appropriation. While the percentage is high, it represents an additional appropriation of less than \$8 million per fiscal year, included in the county reimbursement line. This additional appropriation will allow us to increase county reimbursement to 40%, from our current rate of 35%. Forty percent would be the highest reimbursement rate the state has provided to the counties since FY 2001, when the rate was 48%.

Ohio's indigent defense system was originally designed to be funded equally between the state and the counties, a 50/50 split. But shortly after the system was created, the state changed the language of the statute, and Ohio's counties have been shouldering more than half the cost of the system since. For the past decade, counties have been responsible for 65-75% of the costs of providing this service that is mandated by the U.S. Constitution. We greatly appreciate the Governor's recommendation of increased GRF funding to raise the state's share to 40% for the next biennium. We ask that you support the increased funding for county reimbursement, and consider increasing it further, allowing the state to reimburse counties for half their costs. Attached to my testimony is a spreadsheet that shows the additional GRF appropriation

needed—less than \$14.5 million each fiscal year, into line 501—to bring the state’s share back up to 50% and to bring relief to counties struggling to provide this constitutionally mandated service.

Expanded juvenile representation

Language included in HB 59 (beginning at line 4717) would give my office statutory authority to provide legal representation and other services to children in the custody of the Department of Youth Services (DYS). Since 1994 (except for an interruption between 2001-2003), OPD has been providing legal representation to children in DHS on fact or duration of confinement issues (i.e. appeal issues). This relationship between DHS and OPD has existed via a Memorandum of Understanding.

Since the March 2007 settlement of federal litigation, DHS has also provided a Legal Assistance Program (LAP) which, via a contract with a private law firm, provides legal services to children in DHS custody on issues of conditions of confinement.

The language included in HB 59 will grant OPD statutory access to children in DHS custody and the authority to represent them on both fact/duration and conditions issues. This language will provide consistency, reliability, and longevity to legal services that the state is required to provide to these children.

We have been working directly with DHS to hammer out the details of this expanded representation. Our intention, if this language is adopted as part of HB 59, is to enter into an Interdepartmental Agreement with DHS to cover the cost of two (2) additional attorneys in our Juvenile Division, to begin handling the conditions issues. We will continue to provide fact/duration services as part of our central office budget.

We do, however, have one request for a change related to this language. Because DHS’s contract with the private law firm expires on June 30 and OPD will need to start providing conditions-of-confinement services on July 1, the language authorizing us to do this work (R.C. 120.06 and 5139.04) needs to go into effect on July 1, 2013. We ask the Subcommittee to consider recommending this change.

Affidavit requirement

On an unrelated topic, we have one other request for language that we ask the Subcommittee to consider. Currently, the form used to apply for a public defender or court-appointed counsel must be notarized. In order to facilitate our transition to an electronic billing and case management system, we are asking that the affidavit requirement be removed.

By way of history, when the public defender system began, the law required persons requesting counsel at public expense to file an affidavit of indigency. The affidavit was merely a sworn statement that the person could not afford to hire an attorney, and it contained no financial

information. In the 1990s, the law was changed to require that the form not only be an affidavit, but also contain detailed financial information about the applicant. Since that time, the form has been both an affidavit of indigency and a financial disclosure form.

Because it is the provision and accuracy of the financial information that is important, we believe the requirement that the form be notarized is no longer necessary, and in fact has not been necessary since the 1990s amendment. Instead of being a formal 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.

Many agencies throughout Ohio require financial disclosure as a prerequisite to providing services and to hold people criminally and civilly liable when false information is provided, all without an affidavit. Removing the requirement that the form be an affidavit would have no impact should the applicant not be truthful on the financial disclosure form – the criminal charge is identical whether there is an affidavit or not.

As a practical matter, being defined as an affidavit requires the form to 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.

Removing this requirement also facilitates electronic filing as part of the Ohio Public Defender Online project. Requests for reimbursement must be accompanied by the financial disclosure form, and to maintain the affidavit requirement would require the agency to create electronic signature accounts for notaries, or to continue requiring the paper form be notarized, scanned, and attached to the document. This would be a burdensome requirement that adds little if any value.

Draft language to accomplish this request is attached to my written testimony.

Conclusion

We greatly appreciate that the Governor's budget recommendations keep our central office and branch offices operating at the current levels of service. We also appreciate the increased funding that will bring the county reimbursement levels up to 40%, and we ask you to consider a greater increase that would allow us to reimburse at 50%. Finally, we ask you to consider our two requests for language changes in HB 59: making the effective date of the language regarding legal services for children in DYS custody July 1, 2013, and eliminating the need for a notarized affidavit as part of the application form, in order to assist our transition to a more efficient online system.

Chairman McGregor and members of the Subcommittee, I thank you for your time and consideration. I will be happy to answer any questions you may have.