



May 14, 2015

To: Members of the Senate Finance Corrections Subcommittee
From: John Leutz, Legislative Counsel, CCAO
Re: House Bill 64 - Ohio Public Defender Commission Budget

CCAO wishes to initially indicate that we unequivocally concur with the testimony presented to this Subcommittee by State Public Defender Tim Young on behalf of the State Public Defender Commission and in Mr. Young's request to increase the investment in the indigent defense system by an additional \$20 million per year above the FY 2015 funding levels.

INDIGENT DEFENSE – A State Responsibility

The fundamental right to counsel is "made obligatory upon the States by the Fourteenth Amendment." - Gideon v. Wainwright (United States Supreme Court, 1963)

COUNTY REIMBURSEMENT

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 state-wide 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 appropriates an amount for reimbursement and then proportionally reduces the reimbursement rate to counties.

The current reimbursement rate of 40% returns counties to a level not seen since FY02, however, we ask that at a minimum the original partnership be restored and counties receive reimbursement for 50% of their costs incurred in meeting the State's constitutional mandate to provide legal representation to indigent defendants.

Since 1979 the counties have been carrying more than their 50% share of the burden. The rate averaged 34.6% for the decade prior to the FY14/15 biennium and hit its record low of 26.1% in FY09.



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CCAO is extremely pleased that the House provided an additional \$12 to GRF line item 019501-County Reimbursement in each year of the biennium beyond the appropriation contained in the bill as introduced. The House appropriation level should provide 50% reimbursement to the counties during the biennium. Increasing the reimbursement rate to 50% is the primary priority for CCAO. We ask the Senate, at a minimum, to retain this level of funding.

SYSTEMIC REFORM IS REQUIRED

However, simply increasing reimbursement will not fix the deeper systemic problem – the root difficulty is the choice made by the General Assembly in 1976 to burden counties with the obligation of indigent defense. CCAO firmly believes that fundamental changes to the delivery of indigent defense services must be made by shifting the obligation from the counties to the state as *Gideon* held.

Since 1992, studies have concluded this type of combined funding system is fundamentally flawed.

“We have concluded the present system is neither efficient nor cost-effective in many areas throughout Ohio.”

-Report of the Supreme Court Task Force to Study Court Costs and Indigent Defense, submitted to the Ohio General Assembly by Justice Craig Wright, September 1992

This conclusion was reaffirmed in 2006.

“It is the opinion of this task force that the system of providing counsel to indigent criminal defendants is inefficient and ineffective, and in need of significant improvements. The time has come for systemic changes to occur. The absence of a fully-funded, effective system creates the risk of denying an individual’s constitutional right to counsel.”

-Report and Recommendations of the Ohio Supreme Court Task Force on Pro Se & Indigent Litigants, April 2006

Finally, a national study published in 2009 reiterated that Ohio’s system which requires counties carry the unfunded burden of providing indigent defense is fundamentally flawed.

“Organizing defense services at the state level ... promotes the equitable distribution of resources, and provides improved cost effectiveness.”

“Defense services [should be] organized on a statewide basis. Only in this way is it possible to assure that the quality of defense services throughout the state is substantially the same.”

-The Constitution Project, Justice Denied (2009)

This is an issue of right-sizing government. The state is the most appropriate government to be responsible for the state-wide provision of indigent defense representation.

IMMEDIATE INCREMENTAL SYSTEM IMPROVEMENTS CAN BE ACHIEVED

CCAO supports the proposal put forth by State Public Defender Young in his testimony which,

as he indicated, has been developed with the support of CCAO, which would begin to move toward a state administered system by:

- Increasing state reimbursement to the counties to 50 percent,
- Allowing the office to establish a statewide, uniform set of hourly rates and per-case caps for appointed counsel, and
- Evaluating local delivery systems and basing reimbursement on system standards and accountability.

CCAO also supports the additional \$20 million annually required to fund this reform proposal.

Implemented together and adequately funded, these three reforms would be an important first step toward addressing the many shortcomings of Ohio's indigent defense system, ensuring that the system uses taxpayer money appropriately, and improving accountability for the state's expenditure of funds.

ATTACH ON THE INDIGENT DEFENSE SUPPORT FUND

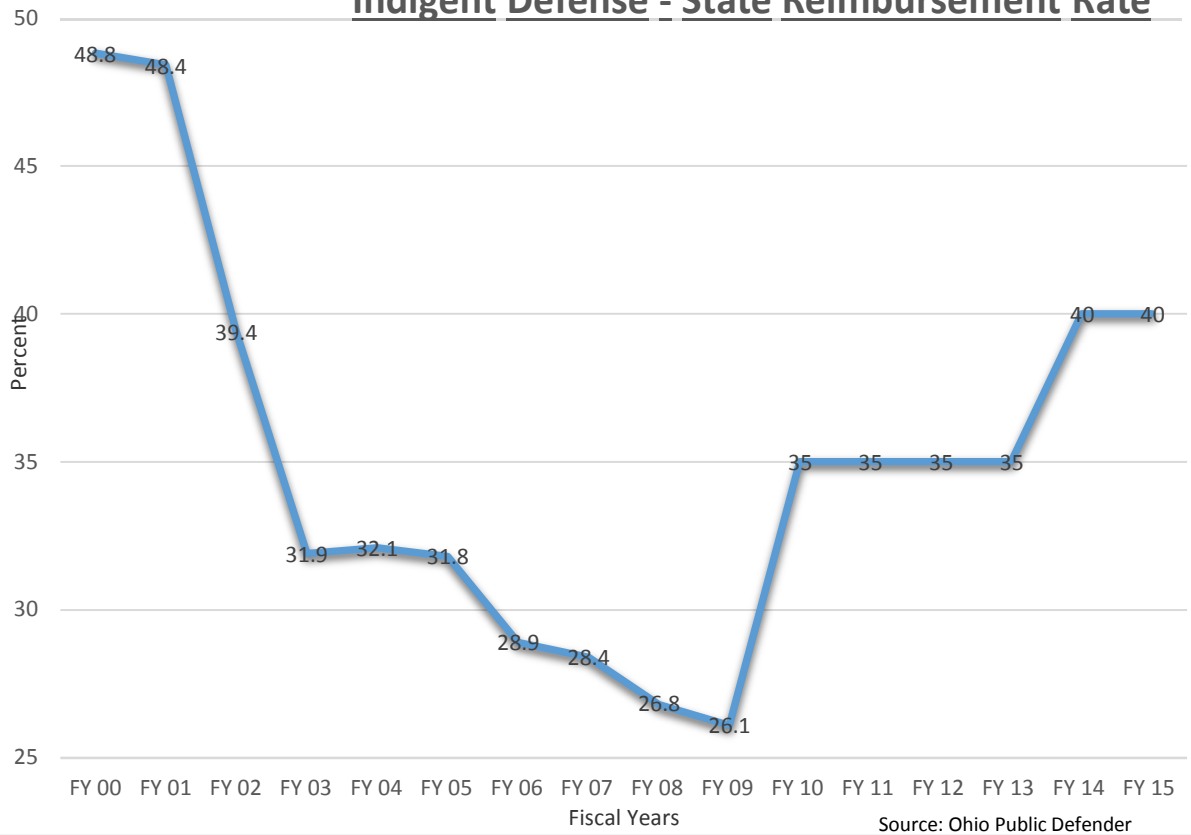
The Office of Budget and Management adjusted the percentage share of the Indigent Defense Support Fund (Fund 5DY0), allocated between county reimbursement and the State Public Defender office operations, to the detriment of reimbursement and in favor of office operations.

While this adjustment is only a 1% change for from 88% to 87% for reimbursement, this is an affront to the extensive efforts of CCAO and the State Public Defender to work with the Legislature to identify and secure dedicated, recurring, non-GRF resources to help fund reimbursement and assist in reducing the reliance upon the LGF. We secured passage of legislative initiatives in the 126th, 127th, and 128th General Assemblies which have resulted in the GRF commitment being drastically reduced while still increasing the reimbursement percentage to counties. At this point special revenue sources deposited into the Indigent Defense Support Fund are providing \$39 million, or 83%, of the nearly \$47 million provided for reimbursement.

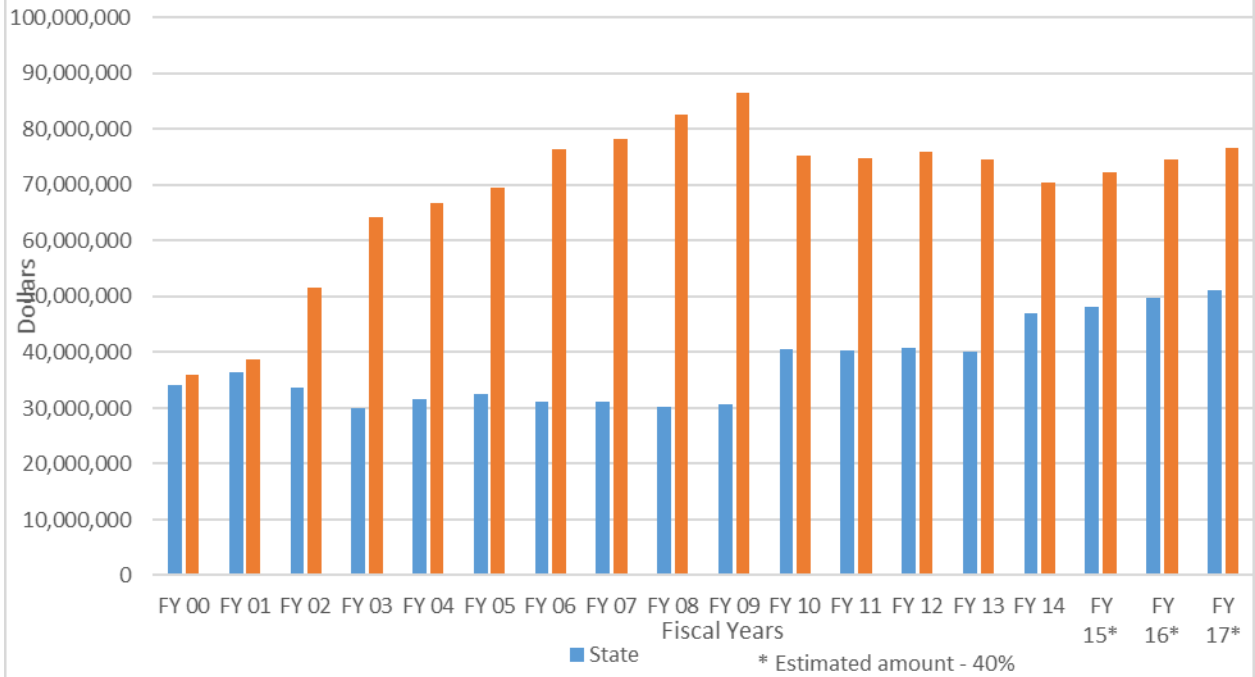
CCAO strenuously objects to temporary budget language that adjusts the percentage allocation to the Indigent Defense Support Fund, asks that the language under "Indigent defense support fund" lines 93343 through 93352 of the bill as passed by the House be deleted from the bill, and urges the Legislature to adopt the funding request for GRF line item 19401 as outlined by Mr. Young in his testimony under the heading "central office solvency."

NOTE: The graphs attached to this memo present a historical perspective of both the reimbursement percentage to the counties and the amount of money expended by the county and reimbursed to the county from the state.

Indigent Defense - State Reimbursement Rate



Indigent Defense Costs: State vs. Counties



Source: Ohio Public Defender