



March 22, 2017

TO: Members of the House Finance Transportation Subcommittee

FROM: John R. Leutz, Esq., CCAO Legislative Counsel

SUBJECT: House Bill 49 – Ohio Public Defender Commission Budget

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

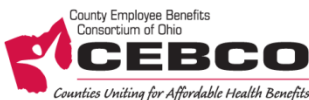
In response to *Gideon*, Ohio opted to require counties to provide indigent defense, with the state reimbursing counties for 50% of the cost of delivering this constitutionally mandated service. The state funded its reimbursement to the counties by utilizing revenue deposited into the state general fund 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.

Since 1979 the counties have been carrying more than their 50% share of the burden. The reimbursement rate has averaged 35% over the last ten years and hit its record low of 26.1% in FY 09.



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Association of Ohio
Service Corporation

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Furthermore, legislation passed last year gives the capital case attorney fee council, comprised of five sitting judges of the courts of appeals, the unilateral power to establish the rate counties must pay for lawyers who represent defendants in capital (death penalty) cases. As a result, counties are now confronted with an unfunded mandate for which the counties should be fully reimbursed by the state.

In addition, \$1.5 million of the county reimbursement appropriation in each year of the current biennium is earmarked to be used exclusively for reimbursement for death penalty cases (see Section 359.10 – HB 64 as Enacted - page 2701). \$913,000 of this amount lapsed in FY16 and it is anticipated an equal amount will laps in FY 17. This means that the counties will lose out on almost \$1.8 million in funding during the current biennium that the General Assembly intended to provide for reimbursement but could not be distributed because of the earmark.

As noted by State Defender Young, the governor's budget would reimburse counties at approximately 40 percent for the biennium. CCAO notes that HB 49, as introduced, provides funding appropriated for indigent defense reimbursement during the FY 18/19 budget that is \$8.1 million less that was actually appropriated for the current biennium. Although the general fund appropriation for county reimbursement a 2.7% increase in FY 18 over FY 17 and a 1.5% increase in FY 19 over FY 18, the allocation of the non-GRF revenues of the Indigent Defense Support Fund (IDSF) committed to reimbursement is reduced by \$6.5 million, or 16 percent, in each year compared to FY 17.

RESTORATION OF THE PARTNERSHIP

We appreciate the strong bipartisan support of the House during the last General Assembly to increase county reimbursement funding to a level that, at the time, was thought to provide 50% reimbursement, however, due to extraordinary circumstances this goal was unable to be obtained. We seek your continued support to achieve this goal this Session during the deliberations on HB 49.

To that end, Representatives Arndt and Rogers have drafted and will be offering Amendment HC0492 to HB 49 that will:

- Eliminate the concept of “proportional reduction” and require the state to reimburse the counties for at least 50% of their indigent defense costs.
- Require counties to be reimbursed for all of their costs in capital cases.
- Appropriate and additional \$14.1 million in FY 18 and \$15.9 million in FY 19 to fund these provisions.

We ask the subcommittee to recommend this amendment be adopted.

ATTACK ON THE INDIGENT DEFENSE SUPPORT FUND (IDSF)

HB 49, as introduced, includes language that reduces from 88 percent to 83 percent the share of the Indigent Defense Support Fund (IDSF) that is allocated to county reimbursement (see Page 78/line 2451). As noted above, this 5% reduction accounts for the approximate \$6.5 million reduction in each year as these non-GRF revenues are diverted from county reimbursement to support the State Public Defender's Office operations. In the current biennium budget this ratio was altered on a temporary basis to 87%/13%.

CCAO views these actions by the administration as 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 state GRF. While CCAO strenuously objects to the proposed permanent 5 percent reduction, the amendment being offered by Representatives Arndt and Rogers does not impact this change. Since the amendment guarantees at least 50% reimbursement which is reflected in the increased GRF line item appropriations, we have chosen not to negatively impact the Public Defender's Office precariously funded operating budget by altering the IDSF allocation split.

CONSTITUTIONAL COMPLIANCE REQUIRES SYSTEMIC REFORM

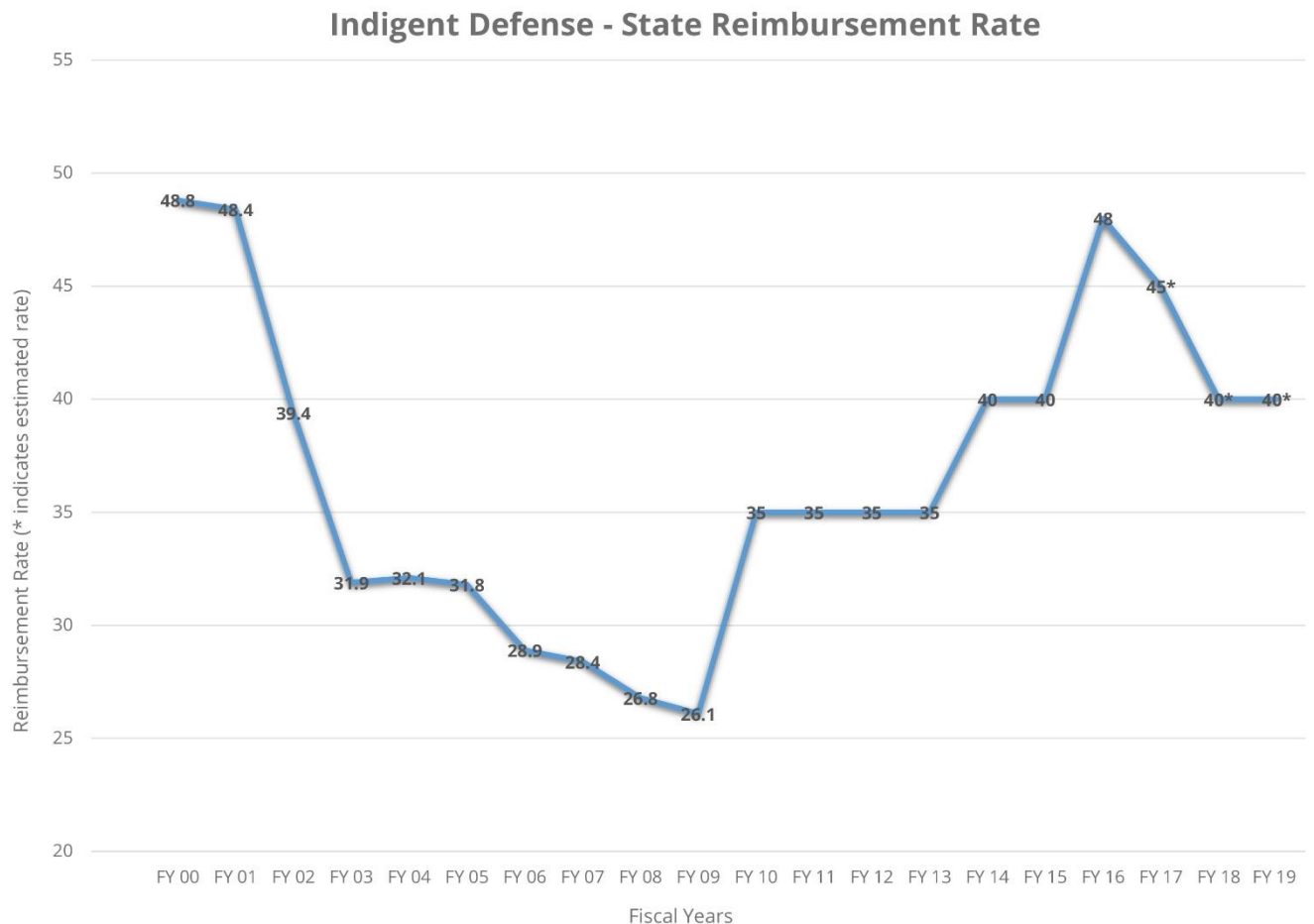
CCAO agrees with the State Public Defender that simply increasing reimbursement will not fix the deeper systemic problem. The root difficulty is the choice made by the General Assembly in 1976 to burden counties with the obligation of indigent defense. CCAO firmly believes that Ohio's current system of providing indigent defense is at risk to a constitutional challenge. Transitioning the delivery of indigent defense services must be made by shifting the obligation from the counties to the State as *Gideon* held. CCAO notes the following three points supporting this transition as the most appropriate course of action:

- Report upon report has concluded that Ohio's system for providing counsel to indigent defendants is inefficient and ineffective and in need of significant improvements and that an excessive portion of the burden for providing indigent defense has been placed upon and is being borne by the counties.
- 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.
- Under the current system, each of Ohio's 88 counties operates its own indigent defense system, which has created discrepancies in the quality, efficiency and cost of representation.

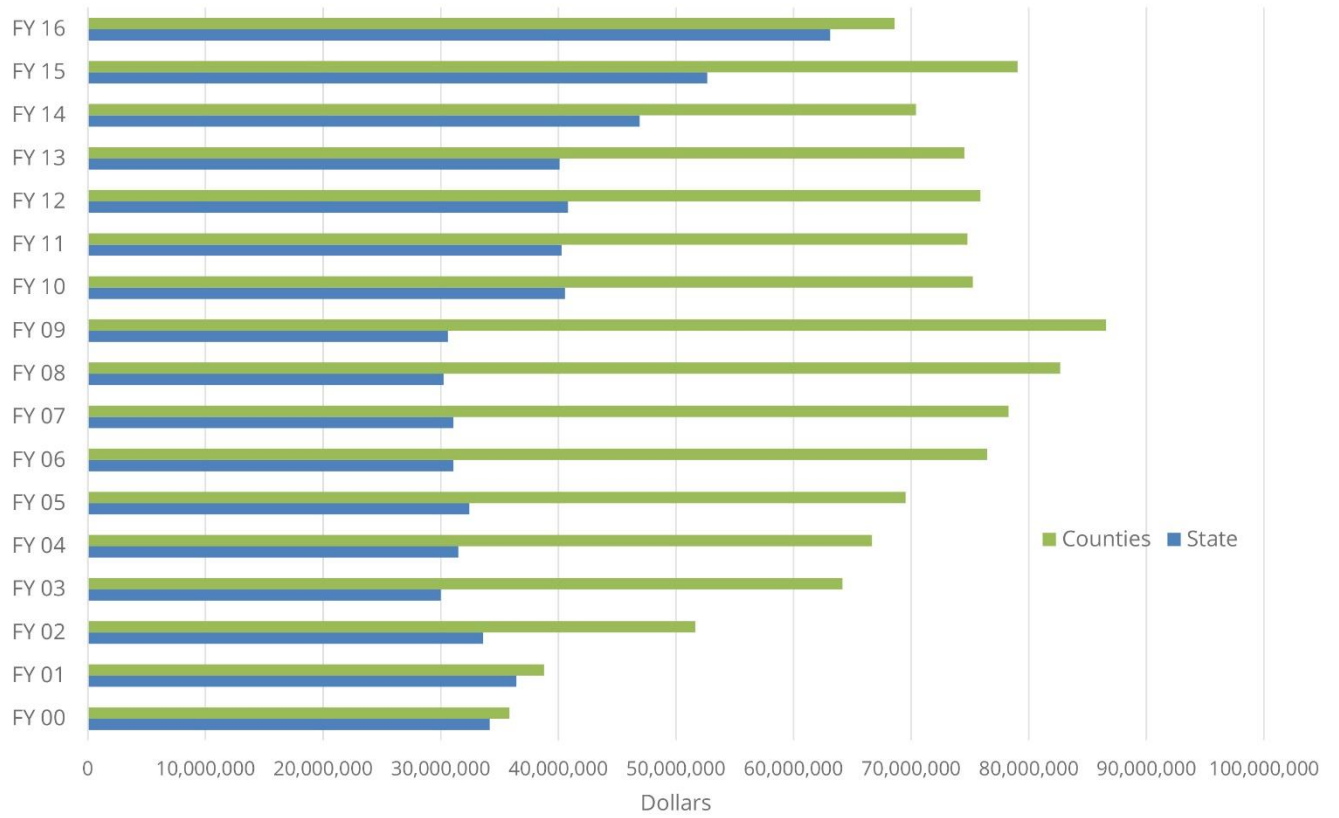
PUBLIC DEFENDER COMMISSION BUDGET

Finally, CCAO wishes to indicate that we unequivocally concur with the testimony presented to this Subcommittee on March 15 by State Public Defender Tim Young on behalf of the State Public Defender Commission and support Mr. Young's request for an additional \$1.1 million per year in funding for the Commission's main operating line item, 019401:State Legal Defense Services.

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 Cost: State and County Funding History



Source: Ohio Public Defender