



HANDBOOK

Ohio County Commissioners

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CHAPTER 103

INDIGENT DEFENSE

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103.01 HISTORICAL PERSPECTIVE

The fundamental right to counsel is “made obligatory upon the States by the Fourteenth Amendment.” - *Gideon v. Wainwright* (1963)

In 1972, the U.S. Supreme Court, pursuant to *Gideon*, mandated in the case of *Argersinger v. Hamlin* that every defendant who could be imprisoned for a crime *must* be represented by an attorney at trial unless that right was effectively waived. If the defendant is indigent, counsel must be provided at public expense. Legal representation for indigent individuals at public expense was later extended to other proceedings, including appeals, post-conviction hearings, juvenile cases and civil commitments. Every state court system must have some type of program ensuring the provision of legal counsel to indigent individuals.

HB 164 of the 111th General Assembly, effective on January 13, 1976, enacted ORC Chapter 120, which provides for the appointment of counsel in trials for all offenses for which liberty may be lost, in appeals, and in probation and parole revocation or post-release control hearings and post-conviction matters related to death penalty cases.

Initially, the Ohio system was a partnership between the state and county governments, with the state reimbursing counties for 50 percent of the cost of delivering this constitutionally mandated service. The state began to erode this partnership when it modified its obligation by instituting the concept of "proportional reduction," in HB 204 of the 113th General Assembly, effective July 1979. This means that counties may receive up to, but not more than, 50 percent reimbursement if the state is able to reimburse all counties at that level; if the state is unable to fulfill this, then counties receive a proportional reduction in reimbursement. The state's annual commitment to reimbursement is determined based upon the funds appropriated from the Indigent

Defense Support Fund and the state general revenue fund in the biennial state budget bill and any executive cuts that may be imposed against the appropriated amount. The annual reimbursement percentage is a function of the fixed amount appropriated for the fiscal year by the General Assembly (minus any executive cuts) and the total amount the counties spend during that year on the provision of legal counsel to indigent individuals which varies from year to year.

Since the "proportional reduction" method of reimbursement was put in place, counties have seen their annual reimbursement rate dip to a record low of 25% percent in 2008. While counties received full 50% funding from 1983 to 1991, it was all downhill after that until 2010. As counties have tried to absorb this unfunded constitutional mandate, numerous attempts to reduce public defense costs have been attempted. Thwarting these efforts has been an ever-increasing criminalization of conduct that has led to record caseload growth at the same time that the state was reducing its contributions. In 1999 there were 269,854 indigent cases statewide. By 2009 the number had ballooned to 417,450 indigent cases. During the same time period of growth in indigent cases, the state reduced its level of appropriations for reimbursement by 16.4%

Significant funding changes were made in the FY 2010/2011 budget bill (HB 1 of the 128th General Assembly) to increase and protect the dedicated funding streams for reimbursement. These included directing that all funding dedicated to reimbursement be deposited into the Indigent Defense Support Fund which is outside of the state's general fund, restructuring the statewide court cost to increase revenue from that source, increasing various Bureau of Motor Vehicles (BMV) reinstatement fees and establishing a bail and appearance bond surcharge. (See Section 103.081, below) Even with these changes the reimbursement rate is expected to only increase to around 35% beginning in 2010.

103.02 A SYSTEMIC PROBLEM

Increasing reimbursement funding will not fix the deeper systemic problem, which is neither the reimbursement rate nor the increase in criminalizing conduct – the root difficulty is the choice made by the General Assembly in 1976 to burden the counties with the obligation of indigent defense. 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.”

“State-operated regional offices would assist local public defender commissions in several areas, including investigative services, social workers, and expert witnesses.”

-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 the fundamentally flawed Ohio system that requires counties carry the unfunded burden of providing indigent defense.

“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)

103.03 OHIO PUBLIC DEFENDER COMMISSION

The Ohio Public Defender Commission is the primary policy making entity in the Ohio indigent defense program. The commission has nine members, one of whom is the chairman, who is appointed by the Governor with the advice and consent of the Senate. The chairman and not less than two members appointed by the Governor and not less than two members appointed by the Supreme Court must be attorneys. Of the four members appointed by the Governor, two must be from each of the two major political parties. Terms of the appointed members are staggered. The commission has four major responsibilities under the law:

1. To appoint a State Public Defender.
2. To adopt rules for the conduct of the offices of the county and joint county public defenders and for the conduct of county assigned counsel systems in the state.
3. To approve an annual operating budget.
4. To make an annual report to the Governor, the General Assembly, and the Supreme Court on the operation of the state Public Defender's Office, the county, and the joint county public defender offices.

The Ohio Public Defender Commission has established, under its rule making authority (ORC 120.03):

1. Standards for indigency.
2. Standards for contracting with law schools, legal aid societies, and non-profit corporations for providing counsel.
3. Standards for the qualifications and size of staff, facilities, etc.
4. Standards and procedures involving excessive caseloads.
5. Standards for minimum qualifications of both assigned counsel and public defenders, with special qualifications for counsel in death penalty cases.
6. Standards for contracts with municipalities for representation of indigents charged under municipal ordinances.

103.04 STATE PUBLIC DEFENDER

The State Public Defender serves at the pleasure of the commission. ORC Section 120.04(A) requires that the State Public Defender be an attorney with four years of experience and must have been a member of the Ohio Bar for at least one year prior to appointment.

The State Public Defender manages an office in Columbus which represents individuals in a variety of criminal proceedings, but primarily in appeals, post-conviction motions, parole and post-release control revocations and habeas corpus writs. Under ORC Section 120.06(A)(1) the State Public Defender may provide representation at trials when requested by a county public defender or when designated by the court. The law also specifically provides that the State Public Defender provide representation to indigent individuals incarcerated in state penal institutions.

Of particular importance to counties are the following responsibilities of the State Public Defender:

1. To supervise the compliance of county and joint county public defender offices and assigned counsel systems with standards of the Ohio Public Defender Commission.
2. To establish standards and guidelines for financial reimbursement to counties.
3. To establish maximum amounts that the state will provide for various types of cases under a county assigned counsel system.

4. To make determinations as to whether persons are truly indigent and thus eligible for services subject to a final determination by the court.
5. To adopt other rules dealing with the administration and supervision of indigent defense services.

103.05 COUNTY OPTIONS FOR PROVIDING INDIGENT DEFENSE SERVICES

ORC Chapter 120 provides five specific options from which a county can choose in order to provide indigent defense services within that county:

1. Establish a county public defender commission.
2. Create a joint county public defender commission with one or more other counties.
3. Utilize an assigned counsel system.
4. Contract with a nonprofit organization.
5. Contract with the State Public Defender.

A map identifying each county's primary system can be found at: <http://opd.ohio.gov/Portals/0/PDF/Library/OPDMapFinalv011718.pdf>.

An explanation of each option follows.

103.051 COUNTY PUBLIC DEFENDER COMMISSION (ORC 120.13-.18)

The county commissioners may decide to form a county public defender commission. Three of its members are appointed by the county commissioners and the remaining two are appointed by the court of common pleas. Its major responsibilities include appointing the county public defender and recommending an annual budget to the county commissioners. County commissioners may also terminate the public defender commission by giving 90 days notice to the Ohio Public Defender Commission.

The county public defender is appointed for up to a four year term. The public defender must be an attorney with at least two years experience and must have been admitted to the Ohio Bar for at least one year.

The county public defender must provide legal representation to any indigent person charged with a violation of state statute that carries a potential loss of liberty. The public defender must also represent juveniles and determine indigency of persons requesting services, subject to review by the court.

There will be times when the public defender cannot take a case because of a conflict of interest. They should notify the court of the facts so that the court can assign counsel as permitted by ORC Section 120.26(E) (see further Section 103.053, below).

103.052 JOINT COUNTY PUBLIC DEFENDER COMMISSION (ORC 120.23-.28)

Two or more counties may form a joint county public defender commission. Each county will appoint three members to the joint county commission. Any county may withdraw from the commission by giving written notice a minimum of 90 days prior to the termination date to the Ohio Public Defender Commission, the joint county public defender commission of the district, and each board of county commissioners in the district, in writing of the termination date. The agreement between the counties will provide for the allocation of the proportion of expenses to be paid by each county, which may be based upon population, number of cases, or other factors. The county auditor of the largest county is the fiscal officer of the joint county commission.

The qualifications and the responsibilities of the joint county public defender are the same as those governing the single county public defender. There will be times when the public defender cannot take a case because of a conflict of interest. They should notify the court of the facts so that the court can assign counsel as permitted by ORC Section 120.26(E) (see further Section 103.053, below).

103.053 ASSIGNED COUNSEL SYSTEM (ORC 120.33)

A county may also create an assigned counsel system in lieu of a public defender office. The county commissioners must adopt a resolution to pay counsel as personally selected by the indigent person or appointed by the court. The resolution must include the provisions necessary to provide effective representation, as well as provisions for contracts with municipalities for representation of indigents charged with criminal violations in municipal court.

In establishing a fee schedule the county commissioners must request the local bar association to submit a proposed fee schedule, which is subject to modification by the commissioners. In addition, the county fee schedule may not exceed the state maximum reimbursement schedule unless the county is willing to pay such excesses entirely with county funds, as reimbursement over the state maximums for various classes of cases will not be allowed. The law also provides that no court may approve compensation that exceeds this fee schedule, however, some judges claim this provision conflicts with the inherent powers of the court doctrine.

It is important to note that assigned counsel cost per case, on average statewide, is 2-3 times higher than cost per case averages for cases handled by public defenders.

103.054 CONTRACT WITH NONPROFIT ORGANIZATION

A county (ORC 120.14(F)) or joint county (ORC 120.24(F)) defender commission may

contract with a nonprofit organization, the primary purpose of which is to provide legal representation to indigent persons, to provide legal representation to indigent criminal defendants under the same system as a county public defender. It should be noted that the nonprofit option is not available to counties that have not established a public defender commission, because only the public defender commission, not the county commissioners, is authorized to enter into the contract with a nonprofit organization.

A contract entered into with a nonprofit organization may provide for payment for the services provided on a per case, hourly, or fixed contract basis and the provisions of the contract pertaining to the financing of the system must be approved by the county commissioners. The nonprofit organization is required to comply with all standards established by the rules of the Ohio Public Defender Commission and by the Ohio Public Defender and all statutory duties and other laws applicable to joint county public defenders.

103.055 CONTRACT WITH THE STATE PUBLIC DEFENDER

ORC 120.04(C)(7) specifically authorizes the State Public Defender to contract with a county public defender commission or a joint county public defender commission to provide all or any part of the services that a county public defender or joint county public defender is required or permitted to provide.

ORC 120.04(C)(7) also authorizes the State Public Defender to contract with a board of county commissioners pursuant to ORC 120.33(B) for the State Public Defender's legal representation of indigent persons within that county. This option may be chosen by the commissioners instead of forming a public defender commission or utilizing an assigned counsel system. The contract may provide for compensation to the State Public Defender on either a per-case, hourly, or fixed contract basis.

103.06 MUNICIPAL ORDINANCE VIOLATIONS

Municipalities are obligated to provide representation to indigents who are charged with violations of their municipal ordinances. However, county or joint county public defender commissions are authorized to contract with a municipal corporation to provide legal representation for indigent persons charged with a violation of an ordinance of the municipal corporation (ORC 120.16(2) or .26(2)). For counties using an assigned counsel system the resolution adopted by the commissioners establishing the assigned counsel rates is required to include provisions for contracts entered into with any municipal corporation under which the municipal corporation shall reimburse the county for counsel appointed to represent indigent persons charged with violations of the ordinances of the municipal corporation (ORC 120.33(A)). If there is no such contract, the city has the responsibility of providing and compensating counsel itself.

103.07 ISSUES ASSOCIATED WITH THE COUNTY DELIVERY SYSTEM

"It costs substantially more per case to provide representation by assigned

counsel than it does through a public defender, yet there appears to be no measurable difference in the quality or effectiveness of representation."

-The Wright Report (1992)

Each of Ohio's 88 counties has chosen one or a combination of delivery methods, and a variety of problems have resulted. Some Counties with public defender offices allow the public defender to provide services only in certain courts or only in a certain percentage of cases, providing the remaining representation through an appointed counsel system. These practices are contrary to findings that public defender systems consistently provide a more efficient and cost-effective approach.

Counties with appointed counsel systems tend to spend more money on indigent defense but gain no measurable difference in the quality of services rendered. A barrier to replacing an appointed counsel system is a vested interest by local courts and counsel, as to both the appointment and payment processes, thus creating a monetary interest for opposing a public defender system. In 2008, 238 private lawyers across Ohio each made over \$50,000.00 in appointed counsel fees, 77 of these made over \$75,000.00, and 17 of these made over \$100,000.00. These numbers continue to rise, and constitute an obvious and massive drain on needed county funds.

Nonprofit organizations also present problems, primarily as to the quality risk inherent in any low-bid contract. These systems generally weigh economic costs as the primary measure, and fail properly to weigh the constitutional risks of such decisions. Throughout the country non-profit corporations often fail to provide services that meet minimal constitutional standards.

Because the choice of delivery systems is at the county level, there are at least 88 different models of delivery. Not surprisingly, this creates vast differences in quality, efficiency, and costs throughout the State. Further, because the counties all share from the same reimbursement fund, those counties with more inefficient and costly systems are using more than a proportionate share of the available funds and reducing the amount of reimbursement overall. This will remain true so long as funds are shared based on costs without regard to quality, efficiency, or Constitutional standards.

103.08 STATE FUNDING FOR INDIGENT DEFENSE REIMBURSEMENT

State funding for reimbursement to the counties comes from several earmarked revenue sources in addition to an appropriation from the state's general revenue fund. The percentage of the county's expenditures on indigent defense that the state will provide reimbursement for is predicated upon the total amount of funding available for reimbursement and the total amount spent state-wide by all of the counties in that year. In addition the indigent defense application fee provides a local source of funding to the county to help subsidize that county's indigent defense costs. There may also be adjustments to the state funding provided based upon client contribution requirements.

103.081 DEDICATED REVENUE SOURCES FOR REIMBURSEMENT

The primary source is the statewide court cost levied under ORC Section 2949.091. Under this section the court in which any person is convicted of or pleads guilty to any offense shall impose one of the following sums as costs in the case to be credited to the Indigent Defense Support Fund: \$30 if the offense is a felony; \$20 if the offense is a misdemeanor other than a traffic offense that is not a moving violation; or \$10 if the offense is a traffic offense that is not a moving violation, excluding parking violations. Prior to FY 2010 the revenue received from the statewide court cost was placed directly into the state's general revenue fund and there was little correlation between the funding received from this source and the amount appropriated by the General Assembly for indigent defense reimbursement to the counties.

The second major source is the additional court cost imposed for a moving violation under ORC Section 2949.094. Under this section the court in which any person is convicted of or pleads guilty to any moving violation shall impose an additional court cost of \$10 upon the offender. Fifty percent (\$5.00) of this additional court cost is to be credited to the Indigent Defense Support Fund. For the purposes of this section "moving violation" means any violation of any state statute or substantially equivalent municipal ordinance, other than a seatbelt violation, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles but does not include pedestrian or the parking offenses. (HB 562 of the 127th General Assembly)

Penalties for operating a vehicle under the influence of alcohol or drugs (OVI) also include an allocation of the fine imposed to the Indigent Defense Support Fund based upon an increasing amount for each successive offense in the amount of \$75.00 for a first offense, \$125.00 for a second offense, \$250.00 for a third offense, and \$500.00 for fourth and subsequent offenses. (SB 209 of the 127th General Assembly)

ORC Section 4509.101 includes surcharges on the financial responsibility reinstatement fee of \$25.00 for a first offense, \$50.00 for a second offense, and \$100 for third and subsequent offenses. ORC Section 4507.45 includes a surcharge of \$10.00 on the general license reinstatement fees. ORC Section 4510.22 imposes a similar \$10 surcharge on Class F license suspensions.

Finally, there is a \$25.00 surcharge collected on bail bonds for all persons who plead guilty or are convicted imposed under ORC Section 2937.22.

The three changes mentioned above along with the changes made in the statewide court cost for indigent defense were included in HB 1 of the 128th General Assembly which was the biennial state budget bill for FY 2010/2011.

See Table 1 at the end of the chapter that outlines these various revenue sources.

103.082 CALCULATING REIMBURSEMENT TO THE COUNTIES

The dedicated revenue sources for indigent defense reimbursement are deposited into the Indigent Defense Support Fund established in ORC Section 120.08 which is a special fund in the state treasury and is separate from the state's general revenue fund. At least 90% of the revenues deposited into this Fund are to be used to reimburse the counties for their costs of providing representation to indigent defendants. Not more than 10% of the Fund may be used by the State Public Defender for the purposes of appointing assistant state public defenders or for providing other personnel, equipment, and facilities necessary for the operation of the State Public Defender Office.

In addition to the distribution of the money deposited into the Indigent Defense Support Fund to the counties for reimbursement, the General Assembly has also provided a general revenue fund appropriation to the county reimbursement line item in the State Public Defender Commission's budget that also supports reimbursement to the counties.

State law requires disbursements to county governments shall be made at least once per year and shall be allocated proportionately so that each county receives an equal percentage of its total cost for operating its public defender system. In reality the State Public Defender's Office attempts to reimburse on a monthly basis. The percentage of reimbursement provided for each monthly submission of expenses by a county may vary since it is based upon the level of total funding available, knowledge of the current amount of total state-wide expenditures up to that point of the year, and the estimated amount of total expenditures anticipated for the year. The percentage for the final reimbursement for the fiscal year (July 1 to June 30) is adjusted to "even out" the total reimbursement so that each county is reimbursed for an equal percentage of its expenditures for that fiscal year.

For the FY 10/11 biennium approximately 70% of the \$93 million funding for reimbursement will come from Indigent Defense Support Fund revenues and 30% will come from the GRF appropriation. While the annual reimbursement percentages are anticipated to be 35% for FY 2010 and 38% for FY 2011, these rates are calculated upon the presumption that the total system costs for FY 2010 will be around \$120 million and for FY 2011 will be around \$128 million.

See Table 2 and Table 3 at the end of this chapter that summarize the county reimbursement history.

103.083 GUIDANCE TO COUNTIES WHEN FILING FOR REIMBURSEMENT

The following provisions of law and rules should be considered carefully by the county when submitting to the State Public Defender's Office for reimbursement from the State:

1. For counties with assigned counsel systems, reimbursement is permitted only up to the maximum of the state fee schedule for various types of cases. If the county

fee schedule exceeds the state maximum reimbursable, any amount over this maximum is *not* reimbursed.

2. For counties with county or joint county public defender commissions, the request for reimbursement must be received by the state within 60 days after the end of the month in which the expenditure was incurred. The request for reimbursement must also include a certification by the county or joint county public defender that all persons provided representation were indigent.
3. For counties with assigned counsel systems, the request for reimbursement must be received within 90 days after the end of the calendar month in which the case is disposed of by the court. The request for reimbursement must also be accompanied by an affidavit of indigency and a financial disclosure form signed by the defendant.
4. If the county or joint county public defender fails to maintain the state commission's standards, notice must be given to the county or joint county commission and to each board of county commissioners. If they do not then come into compliance within 90 days, reimbursement or portions may be eliminated.
5. If the State Public Defender provides legal representation for any person at the local level, then the county must pay to the state 50 percent of the actual cost of representation. This does not apply if a contract exists with the State Public Defender.

A county obligation to pay fees and expenses of assigned counsel representation is not contingent on partial reimbursement from the state under ORC Section 120.33. Further, the Attorney General has approved the denial of reimbursement from the state, unless the expenses are "reasonably related and necessary" to the defense of an indigent client, are specifically allowed by a county's fee schedule, have been approved by the court and paid by the county, and otherwise meet the standards set forth in the Ohio Public Defender Commission's Assigned Counsel Standards. Only then, according to the Ohio Attorney General, would the county be in a position to pursue legal action to seek partial reimbursement of the expenses. (OAG 92-038).

103.084 INDIGENT DEFENSE APPLICATION FEE (ORC 120.36)

A person who is a defendant in a criminal case that requests a public defense is required to pay a non-refundable application fee of twenty-five dollars. This fee is to be assessed by the court in which the criminal case is initially filed and is to be paid to the clerk of that court. The person shall pay the application fee to the clerk of court at the time the person files an affidavit of indigency or a financial disclosure form with the court or public defender or within seven days of that date. If the person does not pay the application fee within that seven-day period, the court shall assess the application fee at sentencing or at the final disposition of the case.

The court shall assess an application fee one time per case. A case means one complete proceeding or trial held in one court for a person that arises out of a single incident or a series of related incidents or two or more offenses that the court handles simultaneously. The court may waive or reduce the fee for a specific person in a specific case upon a finding that the person lacks financial resources that are sufficient to pay the fee or that payment of the fee would result in an undue hardship.

The clerk of the court is required to forward all application fees collected to the county treasurer for deposit in the county treasury. The county shall retain 80% (\$20.00) of the application fees collected which are to be used to offset the costs of providing legal representation to indigent persons. The remaining 20% (\$5.00) of the fee is sent on a monthly basis to the state public defender to be deposited into the Client Payment Fund established in ORC Section 120.04(B)(5). The Client Payment Fund is to be used to appoint assistant state public defenders and to provide other personnel, equipment, and facilities necessary for the operation of the state public defender office, to reimburse counties for the operation of public defender system or to provide assistance to counties in the operation of county indigent defense systems.

103.085 CLIENT CONTRIBUTION PROGRAMS

Ohio law contemplates that persons receiving appointed legal counsel may have to pay for all or a portion of the costs of such representation. Payments from clients for such representation are done through programs referred to as recoupment, contribution, partial payment, or marginally indigent programs.

ORC Section 2941.51(D) requires a person who receives public defense that has, or reasonably may be expected to have, the means to meet some part of the cost of their defense to pay the county an amount the person reasonably can be expected to pay. Ohio Administrative Code Section 120-1-03 (J) requires the establishment of such programs by counties who provide counsel for persons whose incomes fall between 125% and 187.5% of the poverty threshold.

When such funds are collected, the county must remit a portion of the funds to the State Public Defender to be deposited in the Client Payment Fund (this fund is described in Section 103.084 above). ORC Section 120.33(A)(4) requires the county to pay to the State Public Defender the percentage of the payment received from the person that is equal to the current reimbursement rate the state is paying the county.

The government entity tracking and collecting payments may vary by county. In counties that have public defender offices, ORC Section 120.15(B)(3) requires the county public defender to collect this money. There is no prohibition on other county officials or officers collecting the funds. The collecting agent could be the Court, probation department, county treasurer, or county auditor. The only prohibition is that funds cannot be paid directly from a client to private appointed counsel (OAC 120-1-05).

103.09 DETERMINATION OF INDIGENCY IS AN INCOME BASED TEST

Under ORC 120.03(B)(1) the State Public Defender Commission is to determine the standards of indigency and minimum qualifications for legal representation by a public defender or appointed counsel. In establishing these standards and determining who is eligible for legal representation the commission is to consider an indigent person to be an individual “who at the time his need is determined is unable to provide for the payment of an attorney and all other necessary expenses.” Ohio currently utilizes the U.S. Department of Health and Human Services poverty guidelines as the basis of its indigent client eligibility guidelines. An individual whose gross income, as determined from the Financial Disclosure/Affidavit of Indigency form filled out by the defendant and submitted to the court, is below 125% of the United States Department of Health and Human Services Poverty Guidelines qualifies for public defense which can be found at: http://www.opd.ohio.gov/Reimbursement/rm_Guide.htm

This is an income based test and tends to disregard the value of assets which the defendant might have. Neither market value nor equity of an asset is adequately considered in the calculation of indigency. However, the monthly expense of the debt the defendant maintains on an asset is a significant factor reflected in the income calculation for the defendant and effects the determination of indigency. This often leads to the perception that a defendant who lives in an expensive house or drives an expensive car that they are making large monthly payments on is too well off and shouldn't receive a public defense.

103.10 CONSEQUENCES OF STATE “UNDERFUNDING” REIMBURSEMENT

“Because crimes are prosecuted in the name of the state and prosecutors are representing the state ... the state should make a firm commitment to gradually assume the responsibility for funding all expenses associated with providing representation of indigent defendants.”

-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

By underfunding indigent defense, the stage is set for increased back-end costs. These increases include:

1. Increased jail costs – delays and longer sentences.
2. Increase prison costs – rapid turnover and high intake costs.
3. Increased reversals – costs of doing it again.
4. Increased appeals, post-conviction, and innocence cases.

Should the State adopt a more efficient and equitable system that focuses on quality, the benefits would include:

1. Reduce stress on Counties.
2. Meeting Constitutional mandates at less cost.
3. More effective service delivery.
4. Community partnerships.
5. Attract better talent to public defense thereby increasing quality.
6. Enforceable training, workload, and performance standards that strengthen the defense bar and improve the administration of justice.

Under the present system, counties are responsible for funding indigent defense because of the proportional reduction language that allows the State to reduce its obligation. This provision places counties in grave jeopardy.

103.11 REFORM EFFORTS

A coalition of the CCAO, the Ohio Public Defender Commission, and the Ohio State Bar Association has agreed to seek fundamental changes to the delivery of indigent defense services, primarily by shifting the obligation from the county to the state.

In the interim, a number of other reform efforts are on-going and seek improvements within the current structure. First, counties that are not conforming to the Ohio Administrative Code will be asked to come into compliance. This will primarily focus on two areas:

1. Counties that spend a disproportionate amount on indigent defense through inefficient appointed counsel systems.
2. Counties that fail to meet the minimum requirements for an indigent defense system as defined by the Ohio Public Defender Commission in the Ohio Administrative Code.

Finally, the CCAO is working with Ohio Public Defender to reform the present reimbursement system to achieve two goals. The first goal is shortening significantly the time in which a county will receive reimbursement funds from the state. The system presently has a four month built-in delay that can be reduced or eliminated altogether. The second goal is to move from a cost-measured system to one that also looks to individual county poverty populations and to efficiency in providing legal services. This goal will allow counties that have higher poverty rates and that are using indigent

defense funds wisely to receive a greater share, and will encourage those counties that are inefficient to modify their systems.

103.12 ACKNOWLEDGEMENT

This Chapter was written by John Leutz, Esq., CCAO Senior Policy Analyst, who may be reached at (614) 220-7994 or jleutz@ccao.org.

TABLE 1

MATRIX OF COURT COSTS AND FEES REMITTED TO THE INDIGENT DEFENSE SUPPORT FUND (IDSF)

OFFENSE	ORC Section						
	2937.22	2949.091	2949.094	4511.19	4507.45	4509.101	4510.22
Felonies	\$25	\$30	-	-	-	-	-
Misdemeanors & Minor Misdemeanors	\$25	\$20	-	-	-	-	-
Moving Traffic Violations	\$25	\$20	\$5	-	-	-	-
Non-Moving Traffic Violations, Excluding Parking	-	\$10	-	-	-	-	-
DUI Offenses (SB109)	-	-	-	\$75 \$125 \$250 \$500	-	-	-
General License Suspension (FRA)	-	-	-	-	\$10	-	-
Financial Responsibility Suspension (FRA)	-	-	-	-	-	\$25 \$50 \$100	-
F Class License Suspension	-	-	-	-	-	-	\$10

ORC 2937.22: (HB 1-128th General Assembly) Added a \$25.00 Bail Surcharge for IDSF

ORC 2949.091: (HB 1-128th General Assembly) Created a sliding scale of court costs for IDSF. Previously this was \$15 remitted to GRF.

ORC 2949.094: (HB 562-127th General Assembly) Added \$10 court costs divided between IDSF (50%), Drug Law Enforcement Fund (35%), and County or Municipal Indigent Drivers Alcohol Treatment Fund (15%)

ORC 4511.19: (SB 209-127th General Assembly) Increased DUI Penalties:

- 1st Offense Increase \$250 - \$1,000 to \$325 - \$1,075, \$75 to IDSF
- 2nd Offense Increase \$350 - \$1,500 to \$475 - \$1,625, \$125 to IDSF
- 3rd Offense Increase \$550 - \$2,500 to \$800 - \$2,750, \$250 to IDSF
- 4th+ Offense Increase \$800 - \$10,000 to \$1,300 - \$10,500, \$500 to IDSF

ORC 4507.45: (HB 1-128th General Assembly) Increased license suspension fee from \$30 to \$40, \$10 remitted to IDSF

ORC 4509.101: (HB 1-128th General Assembly) Increased FRA Suspension Fee

- 1st Offense Increase from \$75 to \$100, \$25 to IDSF
- 2nd Offense Increase from \$250 to \$300, \$50 to IDSF
- 3rd+ Offense Increase from \$500 to \$600, \$100 to IDSF

ORC 4510.22: (HB 1-128th General Assembly) Increased Class F Suspension from \$15 to \$25, \$10 remitted to IDSF.

TABLE 2

Indigent Defense Cost/Reimbursement History

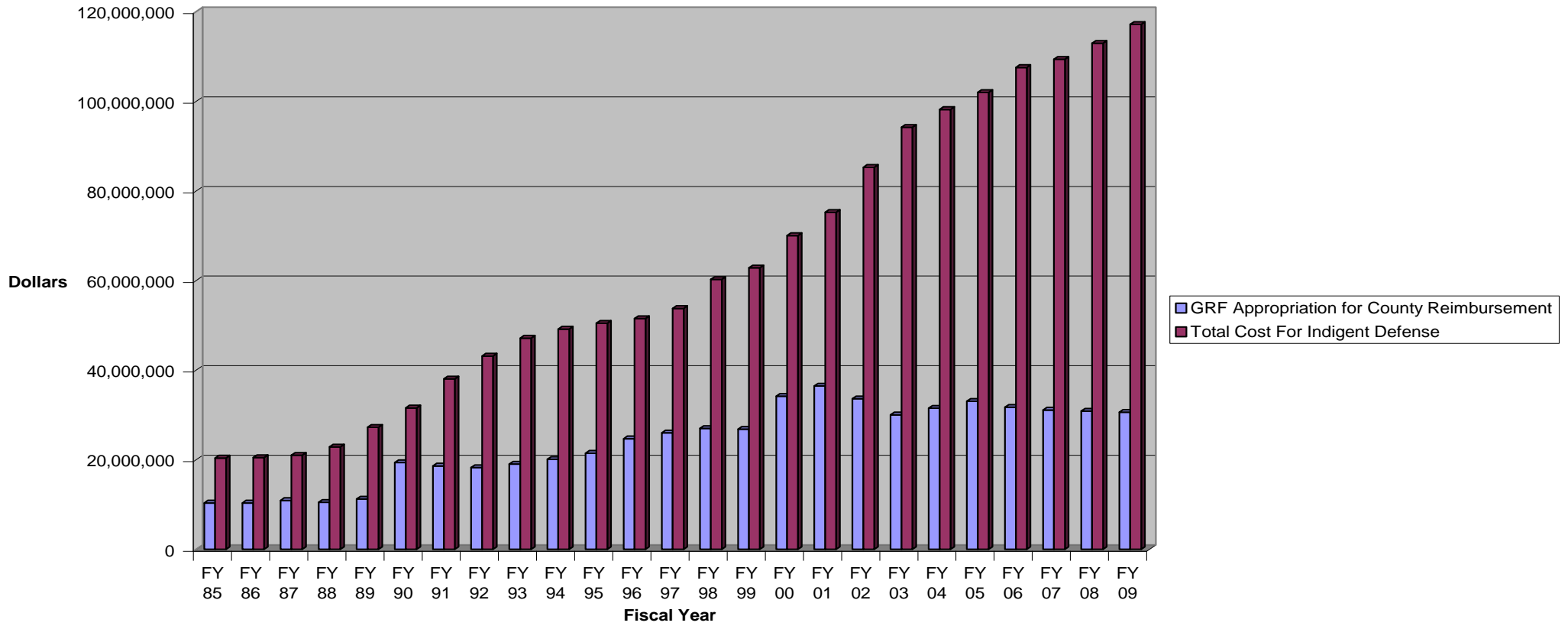


TABLE 3

