



Office of the Ohio Public Defender

Elizabeth R. Miller, *State Public Defender*

Office of the Ohio Public Defender Testimony

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The Ohio Sunset Review Committee

July 30, 2024

Chair Wilken, Vice Chair Hillyer, and members of the Sunset Review Committee, I am Elizabeth Miller, the State Public Defender. Thank you for the opportunity to testify regarding the Ohio Public Defender Commission and the Office of the Ohio Public Defender. Both entities are integral to Ohio's indigent defense system meeting constitutional standards, and as such, I respectfully request the reauthorization of both entities.

A founding case for indigent defense originated in 1963 when the United States Supreme Court ruled in *Gideon v. Wainwright* that the Fifth and Sixth Amendments of the United States Constitution require states to ensure all Americans, no matter their socioeconomic status, be afforded the right to counsel. In its decision, the Supreme Court found that the assistance of counsel is "one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty," and the Sixth Amendment serves as a warning that "if the constitutional safeguards it provides be lost, justice will not still be done."¹ The United States Constitution and case law require states to provide legal counsel to people who are indigent. The State of Ohio fulfills this constitutional requirement through the Ohio Public Defender Commission and the Office of the Ohio Public Defender (OPD).

The Ohio Public Defender Commission (Commission) is a nine-member body. The Commission is composed of attorneys and other professionals appointed by the Governor and the Supreme Court. The Commission appoints the State Public Defender and Revised Code Chapter 120 outlines the Commission's statutory duties to establish standards, rules, procedures, and guidelines regarding numerous aspects of indigent defense in Ohio. The State Public Defender serves as the Director of the OPD.

The OPD provides representation on appeals and post-conviction actions in death penalty, criminal, and youth delinquency cases; at trial when requested by local courts and in counties that contract with OPD

¹ *Clarence E. Gideon v. Louis L. Wainwright*, Corrections Director, 372 U.S. 335 (1963).



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for trial services; and at parole revocation hearings for individuals subject to supervision by the Ohio Department of Rehabilitation and Correction. The OPD also provides conditions of confinement assistance to youth incarcerated in the Ohio Department of Youth Services, as well as technical assistance, research services, training programs, and investigation and mitigation services to local public defenders and court-appointed counsel across Ohio. OPD reimburses counties for a portion of the cost of running local indigent defense systems (processing approximately 12-14,000 bills a month which approximates to 140,000 bills each fiscal year), and enforces standards, rules, and procedures, established by the OPD Commission.

Under Ohio's current indigent defense system, as codified in Revised Code Chapter 120, there are five methods for counties to select from when establishing indigent defense representation in their county: (1) forming a county public defender office; (2) utilizing court appointed counsel; (3) contracting with a non-profit organization; (4) contracting with the OPD; or (5) a public defender's office run jointly among multiple counties (joint public defender office). Counties may generally utilize one or more of these methods. Regardless of the method elected, all counties utilize court appointed counsel. Currently, ten counties (Adams, Athens, Brown, Fayette, Jackson, Pickaway, Pike, Ross, Trumbull and Washington) contract directly with the Ohio Public Defender to provide indigent defense services.

To fully understand the work of the OPD, it is important to note that OPD has four separate budgets:

1. The OPD operational budget funds the OPD's Central Office, which is primarily used to employ staff to help meet our statutory duties prescribed in Revised Code Chapter 120 which are further described below;
2. The reimbursement budget provides reimbursement to all 88 counties for their county-level indigent defense costs;
3. The operational budget for OPD's branch offices provide funding for the county public defender offices maintained by the OPD in Athens, Ross, Trumbull, and Washington counties as a result of those four counties contracting with the OPD to provide indigent defense services in those respective counties;
4. The OPD also has a budget line that serves as a pass through to the Ohio Access to Justice Foundation – or Legal Aid, which is an agency that serves needy Ohioans on civil matters. Legal Aid does not provide indigent defense services, so their budget does not impact defense indigent defense representation.

The OPD is composed of four divisions: the Appellate Services Division, Trial Services Division, Administrative Division, and the Policy & Outreach Division.



The Appellate Services Division represents children and adult clients after they have been convicted and sentenced for a crime. Most of Appellate Services' clients are incarcerated in the Ohio Department of Youth Services or Ohio Department of Rehabilitation & Correction. Appellate Division staff provide legal information and/or orientation to people entering Ohio prisons and juvenile facilities, represent people in direct appeal and other state and federal post-conviction litigation, represent people before the Ohio Parole Board who are eligible for release or clemency, and represent people facing post-release control or parole revocation. Staff provide mitigation support and investigative services to various clients within the office and to capital defense attorneys throughout the state. Appellate Division staff also provide resources and information to family and community members and regularly provide training and assistance to outside counsel. The Appellate Services Division includes the Appeals & Post-Conviction Department, the Death Penalty Department, the Intake & Prison Legal Services Department, the Investigation & Mitigation Department, the Wrongful Conviction Project, and the Youth Defense Department.

The Trial Services Division provides representation to indigent clients facing criminal charges in state trial courts. It consists of three departments: the Trial Department, the Multi-County Program, and the Trumbull County Office. The Trial Department is based in Columbus and provides representation throughout Ohio when requested by a court – often in some of the most serious and complex cases. Through the Multi-County Program and the Trumbull County Office, the OPD acts as the county public defender in ten counties. Those ten counties are Adams, Athens, Brown, Fayette, Jackson, Pickaway, Pike, Ross, Trumbull, and Washington. The staffing that supports the Multi-County Program and the Trumbull County Office are funded through contracts with each of the counties that elect to have the OPD provide indigent defense services in each respective jurisdiction.

The Administrative Division provides creative, strategic, and responsive support services for the entire agency – including for all operations in counties that elect to contract with the OPD for their indigent defense services. It also provides the necessary services common to most state agencies, including fiscal and accounting, human resources and training, systems and information management, procurement, mail, records, fleet, and facilities management. The Administrative Division includes the Fiscal Department, the Human Capital Management Department, the Management Information Systems Department, the Legal Resource Center, and the Office Services Department.

The Policy & Outreach Division serves as the main point of contact for county indigent defense systems and the public. The Division oversees reimbursement to the 88 counties - including enforcing the Ohio Public Defender Commission's standards and the agency's guidelines, processing approximately 140,000 paper bills each year, and working alongside the Administrative Division to develop and deploy



an online system for reimbursement. The Division is responsible for the agency's work with media, social media, legislation, social science research, administrative policy, legal counsel services, and overall agency outreach. The Division provides technical aid and support to indigent defense professionals and leads the agency's efforts in providing training for attorneys and other indigent defense system professionals throughout Ohio.

The OPD collaborates with local public defenders, courts, county commissioners, auditors, as well as State leaders and organizations, to help inform laws, rules, and practices aimed at creating a more effective, efficient, and constitutionally sound indigent defense system in Ohio.

The Ohio Public Defender Commission and the Office of the Ohio Public Defender are essential to providing indigent defense services to the most vulnerable Ohioans. Both entities are composed of highly dedicated and qualified professionals that believe in the protections afforded to each of us in the United States Constitution and Ohio Constitution. I consider it a privilege and honor to serve as the State Public Defender and help lead Ohio's work with indigent defense. In closing, I respectfully request the reauthorization of both the Ohio Public Defender Commission and the Office of the Ohio Public Defender. Thank you for the opportunity to testify before your committee. I am happy to answer any questions you may have at this time.



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