



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 139**

130th General Assembly  
(As Introduced)

**Sens.** Uecker, Peterson, Sawyer, Schaffer, LaRose

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## **BILL SUMMARY**

- Provides that the first appointment by the Governor to the Ohio Public Defender Commission after the effective date of the bill must be selected from a list of up to five nominees submitted to the Governor by the County Commissioners Association of Ohio.
- Removes the requirement that the State Public Defender establish maximum reimbursement amounts to counties for each specific legal service performed by a county appointed legal system.
- Requires, in place of the maximum reimbursement amount, that the State Public Defender establish the hourly rates and per case maximums to be paid to counsel appointed to provide representation to indigent persons.
- Provides that the initial hourly rates cannot exceed the State Public Defender fee schedule in effect on the effective date of the bill and that increases in the hourly rates cannot exceed 5% or the rate established by the consumer price index for the Midwest region, whichever is lower, per annum.
- Requires the State Public Defender to determine the system for indigent defense used by a county.
- Allows the State Public Defender to require the use of any electronic forms or information technology systems provided by the State Public Defender that are necessary for the uniform operation of the law regarding the State Public Defender.
- Allows the State Public Defender to contract with a municipal corporation for the provision of legal representation in cases in which a violation of a municipal ordinance is alleged.

- Allows the State Public Defender to create regional and district offices in lieu of the indigent defense system provided through a county public defender or selected or appointed counsel system.
- Clarifies that the State Public Defender is appointed by a court, rather than designated.
- Repeals a requirement that disbursements from the Indigent Defense Support Fund to county governments must be made at least once per year.
- Allows the county commissioners to terminate the county public defender commission upon the approval of the State Public Defender.
- Provides that the county public defender commission appoints *and retains* the county public defender and may remove the county public defender only for good cause *upon the approval of the State Public Defender*.
- The county public defender commission must *propose* the qualifications, *compensation*, and size of supporting staff and facilities and other requirements needed to maintain and operate the office of the county public defender, *subject to the approval of the State Public Defender*.
- Repeals a provision that expressly permits assistant county public defenders to be appointed on a full or part time basis.
- Allows a court to appoint counsel other than the county public defender when either of the following is the case:
  - The county public defender cannot provide representation due to a conflict of interest; or
  - The workload of the county public defender, according to rules established by the Ohio Public Defender Commission, is of such size or complexity as to threaten the quality of representation of the client by the county public defender.
- Eliminates joint county public defender commissions and joint county public defenders and repeals the related sections and instead allows the State Public Defender to create regional and district offices.
- Increases the guaranteed reimbursement rate to counties for their indigent defense costs.
- Makes necessary cross-reference changes.

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## CONTENT AND OPERATION

### Ohio Public Defender Commission

Existing law requires the Ohio Public Defender Commission to provide, supervise, and coordinate legal representation at state expense for indigent and other persons. The commission consists of nine members, one of whom is the chairperson. The chairperson is appointed by the Governor with the advice and consent of the Senate. Four members are appointed by the Supreme Court, two of whom must be from each of the two major political parties. Four members are appointed by the Governor, two of whom must be from each of the two major political parties. The bill provides that the first appointment by the Governor after the effective date of the bill must be selected from a list of up to five nominees submitted to the Governor by the County Commissioners Association of Ohio.<sup>1</sup>

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<sup>1</sup> R.C. 120.01.



## State Public Defender

Existing law provides that the State Public Defender serves at the pleasure of the Ohio Public Defender Commission and must be an attorney with a minimum of four years of experience in the practice of law and be admitted to the practice of law in Ohio at least one year prior to appointment. Ohio law places numerous requirements on the State Public Defender, including establishing maximum amounts that the state will reimburse the counties for each specific type of legal service performed by a county appointed counsel system.<sup>2</sup> The bill removes this provision (see "**Reimbursements**," below). The bill requires the State Public Defender to establish the hourly rates and per case maximums to be paid to counsel appointed to provide representation to indigent persons (see "**Appointed Counsel**," below).<sup>3</sup> The bill provides that the initial hourly rates may not exceed the State Public Defender fee schedule in effect on the effective date of the bill. Increases in those hourly rates cannot exceed five per cent or the rate established by the consumer price index for the Midwest region, whichever is lower, per annum.<sup>4</sup> The bill also requires the State Public Defender to determine the system for indigent defense used by a county (the system could be a regional or district office, county public defender, or selected or appointed counsel).<sup>5</sup>

Existing law allows the State Public Defender, among other things, to prescribe any forms that are necessary for the uniform operation of the law regarding the State Public Defender. The bill also allows the State Public Defender to require the use of any electronic forms or information technology systems provided by the State Public Defender Office that are necessary for the uniform operation of the law regarding the State Public Defender.<sup>6</sup>

Existing law also allows the State Public Defender to contract with a county public defender commission (or a joint county public defender commission, which the bill repeals, (discussed under "**Regional and district offices**," below) to provide all or any part of the services that a county public defender (or a joint county public defender commission) is required or permitted to provide under Ohio law, or contract with a board of county commissioners of a county that is not served by a county public defender commission (or a joint county public defender commission) for the provision of services by selected or appointed counsel. The bill allows the State Public Defender to

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<sup>2</sup> R.C. 120.04(A) and (B)(9).

<sup>3</sup> R.C. 120.04(B)(14).

<sup>4</sup> R.C. 120.04(E).

<sup>5</sup> R.C. 120.04(B)(13).

<sup>6</sup> R.C. 120.04(C)(6).



also contract with a municipal corporation for the provision of legal representation in cases in which a violation of a municipal ordinance is alleged.<sup>7</sup>

The bill allows the State Public Defender to create regional and district offices (discussed under "**Regional and district offices**," below) in accordance with rules adopted by the State Public Defender. Regional and district offices replace joint county public defender commissions and joint county public defenders, which are repealed by the bill. Regional and district offices may also be used in lieu of the system for indigent defense used by a county through a county public defender or through selected or appointed counsel.<sup>8</sup> Under the bill, "state public defender office" includes the central office, regional offices, district offices, and county or multi-county branch offices of the State Public Defender's office.<sup>9</sup>

Existing law provides that the State Public Defender may provide legal representation, when designated by the court, in all courts throughout the state to indigent adults and juveniles who are charged with the commission of an offense or act for which the penalty or any possible adjudication includes the potential loss of liberty. Existing law also provides that the State Public Defender, when designated by the court, must provide legal representation in parole and probation revocation matters.<sup>10</sup> The bill modifies the second of these two provisions by providing that the court *appoints* the State Public Defender and makes corresponding changes in the bill.<sup>11</sup>

Existing law also provides that a court may appoint counsel or allow an indigent person to select an indigent's own personal counsel to assist the State Public Defender as co-counsel when the interests of justice so require. When co-counsel is appointed to assist the State Public Defender, the co-counsel receives any compensation that the court may approve, not to exceed the amounts provided for in the schedule of fees established by the board of county commissioners. The bill instead (1) provides that the co-counsel receives any compensation that the court may approve in accordance with the hourly rates and per case maximums established by the State Public Defender and

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<sup>7</sup> R.C. 120.04(C)(7).

<sup>8</sup> R.C. 120.04(C)(10).

<sup>9</sup> R.C. 120.04(F).

<sup>10</sup> R.C. 120.06(A)(1) and (5) and (D)(1) and (4).

<sup>11</sup> In R.C. 120.06(A)(1) the word "designated" was not replaced with the word "appointed" in the first of these two provisions.



(2) repeals the county commissioners authority to establish fees for selected or appointed counsel.<sup>12</sup>

### **Indigent Defense Support Fund**

Existing law provides that Indigent Defense Support Fund consists of money paid into the fund pursuant to R.C. 4507.45 (driver's license reinstatement fee), 4509.101 (operating motor vehicle without proof of financial responsibility), 4510.22 (suspension of license for failure to appear or pay fine), and 4511.19 (OVI) and pursuant to R.C. 2937.22 (form of bail), 2949.091 (additional court costs, additional bail), and 2949.094 (additional court costs for moving violation) out of the additional court costs imposed under those sections. The State Public Defender must use at least 88% of the money in the fund for the purpose of reimbursing county governments for expenses incurred related to providing indigent defense and operating its indigent defense system. Disbursements from the fund to county governments must be made at least once per year. The bill removes this requirement, and therefore, disbursements from the fund to county governments may be made at any time.<sup>13</sup>

### **County public defender commission**

Under existing law, the county commissioners in any county may establish a county public defender commission. The bill provides that the county commissioners *upon approval of the State Public Defender* may establish or maintain a county public defender commission.<sup>14</sup> Under existing law, the county commissioners may terminate the county public defender commission at any time if at least 90 days prior to termination, the commissioners notify the Ohio Public Defender Commission in writing of the termination date. The bill modifies this provision by instead providing that the county commissioners may terminate the county public defender commission *upon approval of the State Public Defender*.<sup>15</sup>

Existing law also provides that generally, the county public defender commission appoints the county public defender and may remove the county public defender from office only for good cause. The bill provides that the county public defender commission appoints *and retains* the county public defender and may remove the county public defender from office only for good cause *upon the approval of the State*

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<sup>12</sup> R.C. 120.06(C) and 2941.51(B).

<sup>13</sup> R.C. 120.08.

<sup>14</sup> R.C. 120.13(A).

<sup>15</sup> R.C. 120.13(E).

*Public Defender.*<sup>16</sup> The county public defender commission must *propose* (instead of determine) the qualifications, *compensation*, and size of supporting staff and facilities and other requirements needed to maintain and operate the office of the county public defender, *subject to the approval of the State Public Defender.*<sup>17</sup>

## **County public defender**

The county public defender commission appoints the county public defender for a term not to exceed four years. The county public defender must be an attorney with a minimum of two years experience in the practice of law and be admitted to the practice of law in Ohio at least one year prior to appointment. In carrying out the responsibilities and performing the duties of office, the county public defender must, among other things, appoint assistant county public defenders and all other personnel necessary to the functioning of the county public defender's office, subject to the authority of the county public defender commission to determine the size and qualifications of the staff. All assistant county public defenders must be admitted to the practice of law in Ohio, and may be appointed on a full or part time basis. The bill removes the provision permitting the assistant county public defenders to be appointed on a full or part time basis.<sup>18</sup>

Existing law requires the county public defender to provide legal representation to indigent adults and juveniles who are charged with the commission of an offense or act that is a violation of a state statute and for which the penalty or any possible adjudication includes the potential loss of liberty and in postconviction proceedings.<sup>19</sup>

Existing law provides that nothing in Ohio law governing legal representation by the county public defender prevents a court from appointing counsel other than the county public defender or from allowing an indigent person to select the indigent person's own personal counsel to represent the indigent person. A court may also appoint counsel or allow an indigent person to select the indigent person's own counsel to assist the county public defender as co-counsel when the interests of justice so require. The bill removes these provisions and instead provides that a court may appoint counsel other than the county public defender when the county public defender cannot provide representation due to a conflict of interest or when, according to rules established by the Ohio Public Defender Commission, the workload of the

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<sup>16</sup> R.C. 120.14(A)(1).

<sup>17</sup> R.C. 120.14(B).

<sup>18</sup> R.C. 120.15(A) and (B)(4).

<sup>19</sup> R.C. 120.16(A)(1).



county public defender is of such size or complexity as to threaten the quality of representation of the client by the county public defender.<sup>20</sup>

## Regional and district offices

### Regional and district directors

Under existing law, the boards of county commissioners in two or more adjoining or neighboring counties may form themselves into a joint board and proceed to organize a district for the establishment of a joint county public defender commission. The commission must have three members from each county, who are appointed by the board of county commissioners of the county. The joint county public defender commission must appoint the joint county public defender and may remove the joint county public defender from office only for good cause. Existing law also provides for the powers and duties of the joint county public defender commission and the joint county public defender, describes the legal representation to be provided by the joint county public defender, provides that the State Public Defender is not required to defend indigent persons in counties that have established a joint county public defender's office, and provides for the reimbursement of the joint county board.<sup>21</sup>

The bill repeals these provisions and instead, as discussed above under "**State Public Defender**," allows the State Public Defender to create regional and district offices. Under the bill, there must be a regional director for each regional state public defender office established by the State Public Defender. The State Public Defender appoints each regional director from a list of not less than six nominees. In each region that consists of one or two counties, the legislative authority of each county nominates three persons, and the judges of the court of common pleas of each county collectively nominate three persons. In each region that consists of three or more counties, the legislative authority of each county nominates one person, and the judges of the court of common pleas of each county collectively nominate one person. The regional director serves at the pleasure of the State Public Defender. No person who has been discharged for cause as a regional director by the State Public Defender may be nominated to be a regional director.<sup>22</sup>

There must be a district director for each district office who is selected by the regional director for the region within which the district office resides. The district

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<sup>20</sup> R.C. 120.16(E).

<sup>21</sup> R.C. 120.23, 120.24, 120.25, 120.26, 120.27, and 120.28.

<sup>22</sup> R.C. 120.04(C)(10) and 120.23(A).



director serves at the pleasure of the regional director with the consent of the State Public Defender.<sup>23</sup>

The bill also requires the Ohio Public Defender Commission to establish rules for the conduct of the offices of regional and district offices of the State Public Defender.<sup>24</sup>

### **Calculation of costs**

In any county where a regional or district office has been established, the State Public Defender must calculate total costs for providing such services within the county and must send to the county in which the services are rendered a bill detailing the actual cost of the representation and operations. The county, upon receipt of a bill from the State Public Defender pursuant to this division, must pay the State Public Defender 100% of the amount identified less the state reimbursement rate discussed in "**Reimbursement**," below.<sup>25</sup>

### **Appointed counsel**

Under existing law, in lieu of using a county public defender (or a joint county public defender, which the bill repeals, discussed under "**Regional and district offices**," above) to represent indigent persons, the board of county commissioners of any county may adopt a resolution to pay counsel who are either personally selected by the indigent defendant or appointed by the court. The bill provides that the board must adopt the resolution upon the approval of the State Public Defender and provides that counsel appointed by any court must be paid in accordance with the hourly rates and per case maximums established by the Ohio Public Defender Commission.<sup>26</sup>

Existing law requires the board of county commissioners to establish a schedule of fees by case or on an hourly basis to be paid to counsel for legal services provided pursuant to a resolution adopted by the board. Prior to establishing the schedule, the board must request the bar association or associations of the county to submit a proposed schedule. The schedule submitted is subject to the review, amendment, and approval of the board. The bill eliminates these provisions.<sup>27</sup>

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<sup>23</sup> R.C. 120.23(B).

<sup>24</sup> R.C. 120.03(B).

<sup>25</sup> R.C. 120.23(C).

<sup>26</sup> R.C. 120.33(A).

<sup>27</sup> R.C. 120.33(A)(3) and 2941.51(A) and (B).



Existing law provides that each request to the county for payment from counsel selected by an indigent person or appointed by the court must be accompanied by a financial disclosure form and an affidavit of indigency that are completed by the indigent person on forms prescribed by the State Public Defender. The bill removes the requirement that the request be accompanied by an affidavit of indigency. The bill also removes a provision that provides that compensation and expenses cannot exceed the amounts fixed by the board of county commissioners in the schedule adopted by the board (see previous paragraph).<sup>28</sup>

## **Reimbursement**

### **County public defender commission-existing law**

Under existing law, the county public defender commission must make monthly reports relating to reimbursement and associated case data pursuant to the rules of the Ohio Public Defender Commission to the board of county commissioners and the Ohio Public Defender Commission on the total costs of the public defender's office.<sup>29</sup> The report is audited by the county auditor. The board of county commissioners, after review and approval of the audited report, may then certify it to the State Public Defender for reimbursement. The State Public Defender must also review the report and in accordance with standards, guidelines, and maximums established by the State Public Defender, prepare a voucher for 50% of the total cost of each county public defender's office for the period of time covered by the certified report and a voucher for 50% of the costs and expenses that are reimbursable for capital cases, if any, or, if the amount of money appropriated by the General Assembly to reimburse counties for the operation of county public defender offices, joint county public defender offices (which type of public defender the bill eliminates), and county appointed counsel systems is not sufficient to pay 50% of the total cost of all the offices and systems, for the lesser amount required under R.C. 120.34 (discussed below).<sup>30</sup>

### **Appointed counsel – existing law**

Under existing law, the county auditor draws a warrant on the county treasurer for the payment of counsel in the amount fixed by the court, plus the expenses the court fixed and certifies to the auditor. The county auditor reports periodically, but not less than annually, to the board of county commissioners and to the State Public Defender the amounts paid out pursuant to the approval of the court. The board of county

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<sup>28</sup> R.C. 120.33(A)(4).

<sup>29</sup> R.C. 120.14(C)(2)(b).

<sup>30</sup> R.C. 120.18(A).



commissioners, after review and approval of the auditor's report, or the county auditor, with permission from and notice to the board, may then certify it to the State Public Defender for reimbursement. The State Public Defender also reviews the report, and in accordance with standards, guidelines, and maximums established by the State Public Defender, prepares a voucher for 50% of the total cost of each county appointed counsel system in the period of time covered by the certified report and a voucher for 50% of the costs and expenses that are reimbursable for capital cases, if any, or, if the amount of money appropriated by the General Assembly to reimburse counties for the operation of county public defender offices, joint county public defender offices (which type of public defender the bill eliminates), and county appointed counsel systems is not sufficient to pay 50% of the total cost of all the offices and systems other than costs and expenses that are reimbursable for capital cases, for the lesser amount required under R.C. 120.34 (discussed below).<sup>31</sup>

### **Reimbursement exceeding appropriations and proportionate distribution of funds – existing law**

The total amount of money paid to all counties in any fiscal year for the reimbursement of a percentage of the counties' cost of operating county public defender offices, joint county public defender offices (which type of public defender the bill eliminates), and county appointed counsel systems may not exceed the total amount appropriated for that fiscal year by the General Assembly for the reimbursement of the counties for the operation of the offices and systems. If the amount appropriated by the General Assembly in any fiscal year is insufficient to pay 50% of the total cost in the fiscal year of all county public defender offices, all joint county public defender offices, and all county appointed counsel systems, the amount of money paid in that fiscal year to each county for the fiscal year is reduced proportionately so that each county is paid an equal percentage of its total cost in the fiscal year for operating its county public defender system, its joint county public defender system (which type of system the bill eliminates), and its county appointed counsel system.<sup>32</sup>

### **Reimbursement exceeding appropriations and proportionate distribution of funds in capital cases – existing law**

The total amount of money paid to all counties in any fiscal year for the reimbursement of a percentage of the counties' costs and expenses of conducting the defense in capital cases may not exceed the total amount appropriated for that fiscal year by the General Assembly for the reimbursement of the counties for conducting the

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<sup>31</sup> R.C. 120.33(A)(4) (renumbered to (A)(3) under the bill).

<sup>32</sup> R.C. 120.34.

defense in capital cases. If the amount appropriated by the General Assembly in any fiscal year is insufficient to pay 50% of the counties' total costs and expenses of conducting the defense in capital cases in the fiscal year, the amount of money paid in that fiscal year to each county for the fiscal year is reduced proportionately so that each county is paid an equal percentage of its costs and expenses of conducting the defense in capital cases in the fiscal year.<sup>33</sup> The State Public Defender is required to reimburse 50% of all costs and expenses of conducting the defense in capital cases. If appropriations are insufficient to pay 50% of such costs and expenses, the State Public Defender must reimburse such costs and expenses as provided above.<sup>34</sup>

**Reimbursement for county public defender commission and appointed counsel – operation of the bill**

The bill eliminates the requirement that the State Public Defender prepare a voucher for 50% of the total cost of each county public defender's office or each county appointed counsel system for the period of time covered by the certified report and a voucher for 50% of the costs and expenses that are reimbursable for capital cases, if any, or if the amount of money appropriated by the General Assembly is not sufficient, for the lesser amount described above. Instead, the bill establishes a reimbursement schedule in accordance with standards, guidelines, and maximums established by the State Public Defender described in the table below.

Year (beginning January 1)	% of total cost reimbursed by the State Public Defender for each county public defender's office and each court appointed counsel system	% of costs and expenses reimbursable for capital cases, if any
2014	No less than 50%	50%
2015	No less than 60%	50%
2016	No less than 70%	50%
2017	No less than 80%	50%
2018	No less than 90%	50%
2019	100%	50%

<sup>33</sup> *Id.*

<sup>34</sup> R.C. 120.35.



The bill also removes the requirement that if appropriations are insufficient to pay 50% of the costs and expenses in defending a capital case, the State Public Defender reimburses those costs and expenses.<sup>35</sup>

### **Estimate of amount of money needed to make reimbursement payments**

Existing law requires the State Public Defender, within 30 days of the end of each fiscal quarter, to provide to the Office of Budget and Management and the Legislative Budget Office of the Legislative Service Commission an estimate of the amount of money that will be required for the balance of the fiscal year to make the payments required for county public defenders, joint county public defenders (which the bill eliminates), court appointed counsel systems, and for capital cases. The bill eliminates this requirement.<sup>36</sup>

### **Cross references**

#### **Joint county defender and joint county defender commission**

The bill removes most of the references to the joint county public defender and the joint county public defender commission, including references to the governing statutes, as a result of the repeal of this option (as discussed above under "**Regional and district offices**").<sup>37</sup>

#### **Reimbursement and compensation**

The bill removes a reference in R.C. 120.06 to the section that contains the existing reimbursement rates and instead references the section that contains the new reimbursement rates under R.C. 120.33 and includes in R.C. 2941.51 cross references for the compensation and expenses required under the bill.

#### **Affidavit of indigency**

The bill removes references in R.C. 120.36 and 2941.51 to the requirement that a request for payment be accompanied by an affidavit of indigency.

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<sup>35</sup> R.C. 120.18(A) and (C), 120.33(A)(4) (renumbered to (A)(3)) and (A)(4) (under the bill), 120.35, and 2941.51.

<sup>36</sup> R.C. 120.34.

<sup>37</sup> R.C. 120.03, 120.04, 120.06, 120.08, 120.13, 120.18, 120.23, 120.33, 120.34, 120.35, 120.36, 120.40, 307.441, and 2953.21.

## Provision of counsel

The bill removes references to the provision of counsel under the authority recognized in R.C. 120.06(C), 120.16(E), 120.26(E), or 2941.51.<sup>38</sup>

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## HISTORY

ACTION	DATE
Introduced	05-29-13

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<sup>38</sup> R.C. 2945.37(D) and 2945.40(C)(1).

