

# Ohio Public Defender Commission

**House Transportation and Justice Subcommittee**

*Joseph W. Rogers, Budget Analyst*

*Legislative Service Commission*

*March 19, 2003*

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# **LSC Redbook**

## **for the**

### **Ohio Public Defender Commission**

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*March 19, 2003*

Note: The estimated General Revenue Fund (GRF) spending for FY 2003 used in this LSC Redbook reflects the 2.5% reduction made as a result of the Governor's January 22, 2003 budget cut order. The executive reduction was applied across-the-board to FY 2003 GRF appropriations, subject to certain exceptions. Subsequent to such reductions (and not reflected in the Redbook), state agencies were permitted to reallocate the amount that each of their GRF appropriation line items was reduced, while still absorbing the 2.5% budget cut within the total amount of their GRF appropriations.

# Ohio Public Defender Commission

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- County reimbursement rate estimated at 33%
- Reductions in staff and services
- Information technology upgrade delayed

## OVERVIEW

Criminal defendants have a constitutional right to court appointed attorneys if the accused are financially unable to retain private counsel, a right guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution. The right to counsel extends from the time that judicial proceedings have been initiated against the accused, whether by way of formal charge, preliminary hearing, indictment, information or arraignment, through sentencing and appeal. There is no absolute right to appointed counsel in postconviction proceedings.

### *Duties and Responsibilities*

The Ohio Public Defender Commission, which was created effective January 13, 1976 pursuant to Am. Sub H.B. 164 of the 111th General Assembly, provides, supervises, and coordinates legal representation for persons who cannot afford to hire an attorney to represent them in criminal court. The Commission's largest activity in that regard is the administration of a subsidy program that partially reimburses counties for indigent defense expenditures related to the operation of local public defender offices or the use of appointed counsel.

The Commission also:

- (1) Provides legal services to inmates at the state's correctional facilities, trial level representation in some capital cases, and appellate and post-appeals representation in capital and non-capital cases.
- (2) Acts as a conduit to pass funds to the Ohio Legal Assistance Foundation (OLAF) for the purpose of providing financial assistance to legal aid societies throughout the state.

The Ohio Public Defender Commission itself consists of nine appointed members. The Governor appoints five of the members, including the chair. The Supreme Court of Ohio appoints the other four members. To foster a non-partisan structure, no more than five Commission members can be from one of the two major political parties. The Commission appoints a State Public Defender who maintains and administers the Office of the Ohio Public Defender. The Commission and the Office of the Public Defender share a common state budget.

**County Indigent Defense Services Delivery Systems**

In meeting the right to counsel obligations in criminal matters, each county has the option of:

- (1) Establishing a county public defender system;
- (2) Establishing a joint county public defender system;
- (3) Adopting a schedule to pay private appointed counsel;
- (4) Contracting with the State Public Defender; and
- (5) Contracting with a non-profit corporation.

A county may use one or any combination of the above options, and, in point of fact, most opt to utilize county public defender offices or appointed counsel systems.

**GRF Dependence**

The statutory responsibilities performed by the Commission are financed primarily through the GRF. In the last decade or so, GRF spending comprised in the range of 70% to 80% of total Commission expenditures, with around three-quarters of those GRF expenditures allocated to the state’s County Reimbursement program. Also of note is that approximately 25% of the Commission’s total annual budget has been used to provide non-GRF support to legal aid societies around the state through the Ohio Legal Assistance Foundation.

**Fiscal Years 2002-2003 Expenditure Reductions**

As displayed in the table immediately below, as enacted by Am. Sub. H.B. 94 of the 124th General Assembly, the Commission’s original total GRF appropriations for FYs 2002 and 2003 were \$45.1 million and \$46.1 million, respectively. The original FY 2002 GRF appropriated total was subsequently reduced by \$3.3 million, or 7.4%. And the original FY 2003 GRF appropriated total was subsequently reduced by \$7.5 million, or 16.3%.

<b>Total GRF Appropriations</b>	<b>FY 2002</b>	<b>FY 2003</b>
Original Appropriation	\$ 45,108,157	\$ 46,061,664
Adjusted Appropriation	\$ 41,765,642	\$ 38,565,127
Difference	(\$ 3,342,515)	(\$ 7,496,537)
Percentage Change	(7.4%)	(16.3%)

In order to reduce its GRF expenditures, the Commission took numerous actions that cut payroll and maintenance costs and delayed equipment purchases. Perhaps most notably, the Commission reduced the size of its payroll, largely through attrition and a hiring freeze. Around 20 of what the Commission refers to as “line attorneys” have left in the last two years or so, and just five of those full-time staff attorney have been replaced. Other specific actions taken included screening and limiting collect telephone calls from prison inmates, consolidating rented office space, limiting travel, and reducing its fleet of vehicles by two.

### **Executive Recommendation**

The executive funding recommendations for each of the Commission's four program series is summarized below.

#### **County-Level Indigent Defense**

The Commission requested levels of GRF and related non-GRF funds that would allow the state and county shares of the County Reimbursement and Branch Office programs to be set at 50%. Under the executive-recommended funding levels, the state share of both programs is estimated at 33%. This means that the remainder of the annual costs of both programs, estimated at 67%, will be a county responsibility. The Commission has calculated that it would need additional GRF funding in the amount of \$16.73 million in FY 2004 and \$17.82 million in FY 2005 to reimburse counties for 50% of their annual cost of providing indigent defense legal services.

#### **State Legal Defense Services**

For its State Legal Defense Services program series, the Commission requested GRF and non-GRF funding sufficient to continue providing its FY 2003 level of services in each of FYs 2004 and 2005. The Commission received less GRF funding than it calculated would be necessary to continue FY 2003 service levels by around \$900,000 in FY 2004 and by around \$1.5 million in FY 2005. As the recommended levels of funding are less than what the Commission requested as continuation funding, it will have to reduce the annual operating costs of its State Legal Defense Services program series. Areas where the Commission will apparently look to cut expenditures include legal services contracts, expert witnesses, travel, and payroll. It also appears that the Commission will eliminate its Parole Revocation Program, at an estimated annual savings of about \$300,000.

As a result of staff reductions, including "line" attorneys, and an apparent ongoing hiring freeze, the remaining legal staff will have to carry heavy caseloads. From the Commission's perspective, this raises at least two troubling possibilities: (1) serving fewer clients, and (2) delivering lower quality legal services.

#### **Public Defender Administration**

For its Public Defender Administration program series, the Commission requested GRF and non-GRF funding sufficient to continue providing its FY 2003 level of services in each of FYs 2004 and 2005. The Commission received less funding than it calculated would be necessary to continue FY 2003 service levels by around \$300,000 in FY 2004 and by around \$400,000 in FY 2005. According to the Commission, the executive budget will not support the current number of staff and related maintenance and equipment costs associated with the Public Defender Administration program series. In response, the Commission has already started to eliminate full-time staff positions. Additionally, a planned upgrade of the Commission's desktop computers, servers, and software will be delayed indefinitely.

#### **Civil Legal Services**

The executive budget fully funded the Commission's requested annual appropriation levels for the Civil Legal Services program series (Fund 574). This essentially means that \$13.6 million in each FYs 2004 and FY 2005 will be allocated for distribution to the state's legal aid societies. The remaining portion of each fiscal year's appropriation will be allocated to cover administrative costs. Pursuant to permanent

law, 4.5% of the moneys in the fund will be reserved to the foundation for its actual, reasonable costs in administering the program. This amounts to \$643,756 in FY 2004 and \$643,761 in FY 2005. In addition, another \$15,000 in each fiscal year will be charged as administrative costs borne by the Commission.

In its original budget submission to the Office of Budget and Management (OBM), the Commission requested a core funding level that would have reimbursed counties at the rates of 27% in FY 2004 and 25% in FY 2005. The total amounts requested for county reimbursement were below the level needed to reach the full 50% reimbursement rate target in permanent law because these amounts would have exceeded the maximum funding allowable within the Commission's budget cap as set by OBM. The Commission also requested supplemental GRF funding that was projected to get the county reimbursement rate up to 50%. The executive budget essentially recommended a level of GRF funding that the Commission believes will permit a county reimbursement rate to remain at the current level of 33% in each year of the upcoming biennium.

It is difficult to predict an exact reimbursement rate since the cost to counties for providing indigent defense services is not a stable variable. In fact, over recent years the cost of indigent defense services has been increasing. The rising legal costs are primarily the result of legislation enacted over the past few years, which create new sentencing procedures and other due process of law requirements that increase the amount of time spent on each case. While the Commission has raised the maximum rates for attorney reimbursement, this remains a less proximate cause of increased costs, as counties are not required to pay the maximum rates to local attorneys providing indigent defense services. The Commission only sets the maximum rate; counties only have to pay what they can afford.

## ANALYSIS OF EXECUTIVE PROPOSAL

What follows is LSC fiscal staff's analysis of the Ohio Public Defender Commission's biennial budget covering FYs 2004 and 2005 as contained in the executive budget. The presentation of that budget information is organized around the following four program series.

- **State Legal Defense Services**
- **Public Defender Administration**
- **County- Level Indigent Defense**
- **Civil Legal Services**

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### State Legal Defense Services

### Program Series 1

**Purpose:** To provide legal representation to indigent adults, juveniles, and incarcerated individuals in all courts when the United States Constitution requires representation, or when requested by the court, the county or joint county public defender, or an inmate.

#### State Legal Defense Services

**Program Description:** The State Legal Defense Services program provides legal representation to indigent adults, juveniles, and incarcerated individuals in all courts when the U.S. Constitution requires representation, or when it is requested by the court, the county or joint county public defender, or an inmate. Most legal matters in which the state provides direct representation involve appeals or death penalty cases. Indigent defense for most other cases is provided by local public defenders. The subprograms in this area include the Commission's Legal and Death Penalty divisions, its Legal Resource Center and Trial Section, as well as educational seminars and publication activities.

**Funding Source:** GRF: federal reimbursements: legal services payments transferred from the Department of Rehabilitation and Correction; client payments: and educational seminar fees and publication sales

**Line Items:** 019-401, State Legal Defense Services; 019-602, Inmate Legal Assistance; 019-603, Training and Publications; 019-604, County Representation; 019-608, Federal Representation

**Implication of the Executive Recommendation:** The following table shows the line items that are used to fund the Commission’s State Legal Defense Services program, as well as the Governor’s recommended funding levels.

Fund	ALI	Title	FY 2004	FY 2005
GRF	019-401	State Legal Defense Services	\$ 5,724,780	\$ 5,693,572
<b>Total funding: GRF</b>			<b>\$ 5,724,780</b>	<b>\$ 5,693,572</b>
GSF	019-602	Inmate Legal Assistance	\$ 52,698	\$ 53,086
GSF	019-603	Training and Publications	\$ 16,000	\$ 16,000
GSF	019-604	County Representation	\$ 255,789	\$ 259,139
<b>Total funding: GSF</b>			<b>\$ 324,487</b>	<b>\$ 328,225</b>
FED	019-608	Federal Representation	\$ 351,428	\$ 355,950
<b>Total funding: FED</b>			<b>\$ 351,428</b>	<b>\$ 355,950</b>
<b>Total funding: State Legal Defense Services</b>			<b>\$ 6,400,695</b>	<b>\$ 6,377,747</b>

The executive recommended funding levels for the Commission’s GRF line item 019-401, is less than the amounts requested by \$917,570, or 13.8%, in FY 2004 and \$1,532,221, or 21.2%, in FY 2005. The amounts requested by the Commission reflected its calculation of the cost of providing the current level of GRF-funded state legal defense services in each of the next two fiscal years. Roughly 80% of the line item’s appropriation is allocated for employee salaries and fringe benefits. Presumably, the Commission will have to cut or constrain the amount of spending that it had planned to allocate from this line item for personal services, purchased personal services contracts, maintenance, and equipment. This could be accomplished by delaying purchases, holding vacant staff positions open, shifting necessary expenditures to other line items, or some mix of these fiscal strategies.

As a result, of the executive recommended levels of GRF funding, the Commission is considering the elimination of its Parole Revocation Program. Under this program, the Commission provides legal representation to persons charged with violating parole or post release control. In FY 2002, the Commission provided representation at parole revocation hearings in approximately 4,300 cases. If this program were eliminated, the annual savings to the Commission is estimated at about \$300,000.

The executive budget fully funded the Commission’s requested levels of appropriation authority for certain non-GRF funds that collect various legal representation payments.

**Earmarking:** None

**Permanent and Temporary Law:** The following temporary law relative to the State Legal Defense Services program series is contained in the executive budget.

**Federal Representation**

Temporary law states that federal line item 019–608, Federal Representation, is to serve as the depository for reimbursement payments received by the Commission from the federal courts for providing legal representation in federal court cases at the request of the federal courts.

**Public Defender Administration**

**Program Series 2**

**Purpose:** To provide quality support services that are responsive to the Commission’s needs, goals and objectives.

**Public Defender Administration**

**Program Description:** The Commission’s administrative component provides services necessary for continued operations that are common to most state agencies, including fiscal and accounting, personnel and training, computer information systems, and general office services, such as purchasing, inventory, records management, fleet, and delivery. In addition, the administrative component handles matters specifically mandated in Chapter 120. of the Revised Code, which also includes collecting reimbursements from counties, processing reimbursements paid to counties, producing educational seminars and conferences, and maintaining a library.

**Funding Source:** Primarily GRF and smaller amounts of reimbursement payments collected from counties

**Line Items:** 019–321, Public Defender Administration; 019–605, Client Payments; 019–606, Legal Services Corporation

**Implication of the Executive Recommendation:** The following table shows the line items that are used to fund the Public Defender Administration program series, as well as the Governor’s recommended funding levels.

Fund	ALI	Title	FY 2004	FY 2005
GRF	019-321	Public Defender Administration	\$1,430,057	\$1,351,494
SSR	019-606	Legal Services Corporation	\$ 15,000	\$ 15,000
GSF	019-605	Client Payments	\$ 285,533	\$ 285,533
<b>Total funding: Public Defender Administration</b>			<b>\$1,730,590</b>	<b>\$1,652,027</b>

The executive recommended funding levels for the Commission’s GRF line item 019–321, is less than the amounts requested by \$202,254, or 12.4%, in FY 2004 and by \$311,550, or 18.7%, in FY 2005. This is a line item that is heavily loaded with funding to cover employee salaries and fringe benefits. Presumably, as a result of the executive recommended levels of GRF funding, the Commission will have to eliminate some positions, curb maintenance and equipment spending, not fill vacant staff positions, shift certain expenditures to non-GRF line items, or some mix of all of these fiscal strategies.

The executive budget fully funded the Commission’s requested levels of appropriation authority for certain non-GRF funds, including administrative costs charged to the Civil Legal Services Program.

**Earmarking:** None

**Permanent and Temporary Law:** None

**County-Level Indigent Defense**

**Program Series 3**

**Purpose:** To provide, facilitate, and improve the delivery of criminal defense services to indigent persons accused of crimes handled by common pleas, municipal, and county courts.

The following table shows the line items that are used to fund the Commission’s County-Level Indigent Defense program series, as well as the Governor’s recommended funding levels.

Fund	ALI	Title	FY 2004	FY 2005
GRF	019-403	Multi-County: State Share	\$ 917,668	\$ 930,894
GRF	019-404	Trumbull County - State Share	\$ 299,546	\$ 308,450
GRF	019-405	Training Account	\$ 33,323	\$ 33,323
GRF	019-501	County Reimbursement - Non-Capital Cases	\$ 30,567,240	\$ 32,630,070
GRF	019-503	County Reimbursement - Capital Cases	\$ 693,000	\$ 726,000
<b>Total funding: GRF</b>			<b>\$ 32,510,777</b>	<b>\$ 34,628,737</b>
SSR	019-601	Multi-County: County Share	\$ 1,923,780	\$ 1,991,506
SSR	019-610	Trumbull County - County Share	\$ 624,841	\$ 658,764
<b>Total funding: SSR</b>			<b>\$ 2,548,621</b>	<b>\$ 2,650,270</b>
<b>Total funding: County-Level Indigent Defense</b>			<b>\$ 35,059,398</b>	<b>\$ 37,279,007</b>

The analysis of this program series is organized around a mix of issues, programs, and selected non-GRF revenue streams as follows:

- **COUNTY REIMBURSEMENT**
- **COUNTY BRANCH OFFICE**
- **PRO BONO TRAINING**

**County Reimbursement**

**Program Description:** The County Reimbursement program is responsible, under existing law, for providing up to 50% reimbursement to counties for the cost of providing attorneys to represent indigent persons who are charged with a crime or are appealing their conviction(s). The program also establishes standards (including indigence), guidelines, and maximum fees for state reimbursement of county-level indigent defense services, and monitors county compliance with those standards. The program was established under the Ohio Public Defender Law of 1976 and was subsequently modified by Am. Sub. H.B. 291 of the 115th General Assembly.

In Ohio, counties are required to provide and pay for legal counsel for indigent persons where a right to counsel exists, and are reimbursed a portion of those costs by the state. The Revised Code allows counties to use one or more of five different types of legal services delivery systems. These include: (1) setting up a county public defender office, (2) setting up a joint county public defender office, (3) utilization of private appointed counsel, (4) contracting with the State Public Defender, or (5) contracting with a non-profit corporation. Most counties use a county public defender office and/or appointed counsel system.

**Funding Source:** GRF

**Line Items:** 019-501, County Reimbursement - Non-Capital Cases; 019-503, County Reimbursement-Capital Cases

***Implication of the Executive Recommendation:*** The executive recommendation appropriates a combined total of \$31.3 million in FY 2004 and \$33.4 million in FY 2005. This level of funding is expected to allow the Commission to reimburse counties for around 33% of their annual cost of providing indigent defense legal services.

Also of note are the executive recommended appropriations for the capital case component of the County Reimbursement program (GRF line item 019-503). Relative to its estimated FY 2003 expenditures of \$809,901, the executive recommended level of funding is lower by \$116,901, or 14.4%, in FY 2004 and by \$83,901, or 10.4%, in FY 2005. These reduced appropriations appear to reflect a belief that the amounts that will be needed to reimburse counties for capital cases in each of the next two fiscal years will decline. If that were not to happen in either fiscal year, the Commission would, as it has done in the past, likely seek Controlling Board approval for a transfer of appropriation authority from the much larger line item 019-501, County Reimbursement - Non-Capital Cases, to line item 019-503, County Reimbursement - Capital Cases. For the purposes of the County Reimbursement program, these two GRF line items are treated as a single revenue stream.

The Commission has calculated that it would need additional GRF funding in the amount of \$16.73 million in FY 2004 and \$17.82 million in FY 2005 to reimburse counties for 50% of their annual cost of providing indigent defense legal services.

***Earmarking:*** None

***Permanent and Temporary Law:*** The following permanent law relative to the County Reimbursement program is contained in the executive budget.

***Additional court costs (R.C. section 2949.091)***

The bill: (1) increases from \$11 to \$15 the additional costs a court generally is required to impose upon an offender who is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, and (2) increases from \$11 to \$15 the amount that the court is required to add to any bail to be paid by a person who is charged with any offense other than a traffic offense that is not a moving violation.

Existing law prescribes procedures by which these additional moneys collected as costs are transmitted to the Treasurer of State for deposit into the GRF. Existing law also prescribes procedures by which the \$11 additional bail is either returned to the person or transmitted to the Treasurer of State for deposit into the General Revenue Fund. A court may waive the payment of the additional \$11 costs only in specified circumstances, and a person may not be placed or held in a detention facility for failing to pay the additional \$11 costs or bail.

According to information provided by OBM, this proposed increase, in additional court costs will generate an additional \$8.0 million annually thereby allowing the Ohio Public Defenders Commission to reach a 33% county reimbursement rate in each of FYs 2004 and 2005. The Commission is of the opinion that, of the estimated \$8.0 million in additional court costs collected annually, about \$2.0 million in FY 2004 and nearly \$5.0 million in FY 2005 is actually appropriated for the purpose of funding its county reimbursement program.

### **County Branch Office**

**Program Description:** The County Branch Office program provides local indigent defense services by the State Public Defender as an alternative to traditional appointed counsel or county public defender offices. The Commission currently operates two such offices: Trumbull County and the Multi-County office. The Trumbull County Branch Office, established in FY 1985, provides local indigent defense services for Trumbull County. The Multi-County Branch Office provides local indigent defense services to ten counties in the south and southeastern part of Ohio. The ten counties are Adams, Athens, Brown, Fayette, Jackson, Meigs, Pickaway, Pike, Ross, and Washington, with public defender offices located in Athens, Ross, and Washington counties. The Multi-County Branch Office was established in January 1991. These State Public Defender-operated offices are authorized under section 120.04(C)(7) of the Revised Code.

**Funding Source:** GRF and payments from participating counties

**Line Items:** 019-403, Multi-County: State Share; 019-404, Trumbull County - State Share; 019-601, Multi-County: County Share; 019-610, Trumbull County - County Share.

**Implication of the Executive Recommendation:** The County Branch Office program receives funding from two GRF line items, which represent the state's share of the cost of running local public defender offices. There are also two non-GRF line items, which represent the portion of each branch office's costs that are covered by each participating county. The effect of the executive recommendation will be to reduce the fiscal burden on the state's GRF while increasing the fiscal burden associated with these offices for the 11 participating counties. As the Commission apportions the costs associated with these branch offices in a manner that mirrors its County Reimbursement program, this level of recommended funding should result in the state's share being in the range of 33%.

**Earmarking:** None

**Permanent and Temporary Law:** The following temporary law relative to the County Branch Office program is contained in the executive budget.

#### **Indigent Defense Office**

Temporary law stipulates that the funds appropriated to GRF line item 019-404, Trumbull County – State Share, and State Special Revenue line item 019-610, Trumbull County – County Share, be used for the purpose of supporting an indigent defense office for Trumbull County. The Commission currently maintains a branch office in the City of Warren that provides indigent defense services in Trumbull County. Funding for the Trumbull office is drawn solely from these two line items. Trumbull County's contribution to the indigent defense office is deposited in the state treasury to the credit of Fund 4X7 (line item 019-610, Trumbull County – County Share).

#### **Multi-County Office**

Temporary law stipulates that the funds appropriated to GRF line item 019-403, Multi-County: State Share, and State Special Revenue line item 019-601, Multi-County: County Share, be used for the purpose of supporting the Commission's Multi-County Branch Office program. Under the program, the Commission provides indigent defense services to a ten-county region that covers the south and southeastern part of Ohio, including Adams, Athens, Brown, Fayette, Jackson, Meigs, Pickaway, Pike, Ross, and Washington counties. The program's regional office is located in Athens County, with branch

offices situated in Ross and Washington counties. Funding for the Multi-County Branch Office program is drawn solely from these two line items. The local contribution provided by each of the ten participating counties is deposited in the state treasury to the credit of Fund 4C7 (line item 019-601, Multi-County: County Share).

**Pro Bono Training**

**Program Description:** Under the Commission’s Pro Bono Training program, it contracts with private and non-profit training companies to provide continuing legal education (CLE) certified seminars to attorneys who practice criminal indigent defense law. The Commission pays the seminar companies a fee for each attorney who attends a seminar under the program. The seminar companies presently charge \$125 per attorney for a regular one-day seminar and \$250 per attorney for the two-day Rule 20 seminars.

The Commission allows private attorneys to attend seminars at no cost to the attorney. In exchange for free attendance, each attorney must provide one pro bono (for free) case for every seminar attended. Pro bono cases must be provided within one year of the seminar date, and pro bono attorneys are limited to two seminars per year. Public defenders also are limited to two seminars per year.

**Funding Source:** GRF

**Line Item:** 019-405, Training Account

**Implication of the Executive Recommendation:** The executive recommended level of funding for the Pro Bono Training program is \$854 less than what the Commission requested in each fiscal year, which was \$34,177 in each of FYs 2004 and 2005. The Commission had estimated that its requested amount of funding would have enabled about 234 attorneys to obtain training in each of the next two fiscal years. Presumably, the slightly lower level of executive recommended funding means that a few attorneys that might otherwise have been offered the pro bono training program will not participate, perhaps around a half dozen or so.

**Earmarking:** None

**Permanent and Temporary Law:** The following temporary law relative to the Pro Bono Training program is contained in the executive budget.

**Training Account**

Temporary law specifies that the Commission use the funds appropriated to GRF line item 019-405, Training Account, to provide legal training programs at no cost for private appointed counsel who represent at least one indigent person at no cost (*pro bono*), and for state and county public defenders and attorneys who contract with the Commission to provide indigent defense services. This GRF line item essentially supports the Commission’s Pro Bono Training program that uses contracts with private and non-profit training companies to provide continuing legal education (CLE) certified seminars to attorneys who practice criminal indigent defense law.

**Civil Legal Services**

**Program Series 4**

**Purpose:** To administer and fund the state’s civil legal services program.

**Civil Legal Services**

**Program Description:** The Ohio Legal Assistance Foundation (OLAF) is a non-profit entity, created by statute, and charged with administering state funds for Ohio’s legal aid societies. The OLAF, established by Am. Sub. H.B. 152 of the 120th General Assembly, effective July 1993, develops financial support and solicits financial contributions for use in providing assistance to Ohio’s legal aid societies. Moneys deposited in Fund 574 are passed through the Commission to the foundation. The OLAF then administers payments to non-profit legal aid societies that provide legal representation to indigent persons in civil cases. These payments are distributed to legal aid societies throughout the state pursuant to a statutory formula based on poverty population. Every county is served by one or more legal aid societies.

**Funding Source:** Interest-bearing trust accounts established and maintained by attorneys, law firms, or legal professional associations pursuant to sections 4705.09 and 4705.10 of the Revised Code; interest-bearing trust accounts established and maintained by title insurance agents or title insurance companies pursuant to section 3953.231 of the Revised Code; additional filing fees collected by municipal, county, and common please courts on each new civil action or proceeding pursuant to sections 1901.26, 1907.24, and 2303.201 of the Revised Code; and gifts, bequests, donations, contributions, and income from investments

**Line Item:** 019-606, Legal Services Corporation

**Implication of the Executive Recommendation:** The following table shows the line item that is used to fund the Civil Legal Services program series, as well as the Governor’s recommended funding levels.

Fund	ALI	Title	FY 2004	FY 2005
574	019-606	Legal Services Corporation	\$14,305,700	\$14,305,800
<b>Total funding: Civil Legal Services</b>			<b>\$14,305,700</b>	<b>\$14,305,800</b>

The executive budget fully funded the Commission’s requested annual appropriation levels for the Civil Legal Services program series (Fund 574). This essentially means that \$13.6 million in each FY 2004 and FY 2005 will be allocated for distribution to the state’s legal aid societies. The remaining portion of each fiscal year’s appropriation will be allocated to cover administrative costs. Pursuant to permanent law, 4.5% of the moneys in the fund will be reserved to the foundation for its actual, reasonable costs in administering the program. This amounts to \$643,756 in FY 2004 and \$643,761 in FY 2005. In addition, another \$15,000 in each fiscal year will be charged as administrative costs borne by the Commission.

**Earmarking:** None

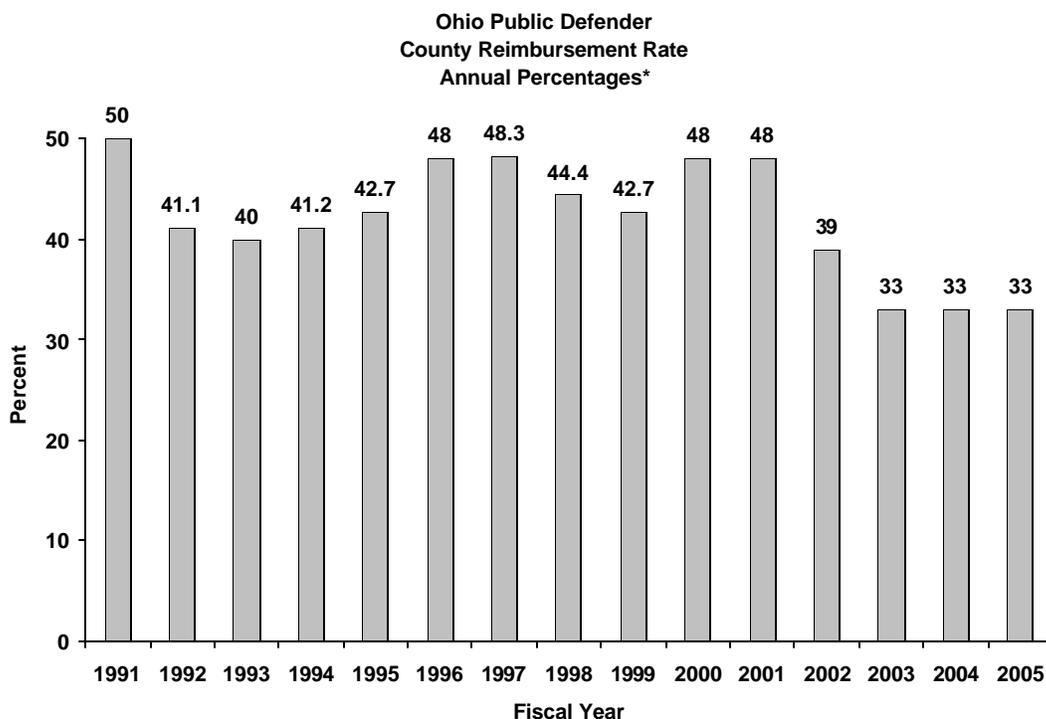
**Permanent and Temporary law:** None

## ADDITIONAL FACTS AND FIGURES

Ohio Public Defender Commission Staffing Levels*								
Program Area	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003*	FY 2004*	FY 2005*
State Legal Defense Services	103.5	107.5	110.5	115.0	102.0	73.5	73.5	73.5
County-Level Indigent Defense	29.0	29.0	31.5	31.5	33.0	28.5	28.5	28.5
Administration	29.0	31.0	31.5	31.5	37.0	27.5	27.5	27.5
<b>Totals</b>	<b>161.5</b>	<b>167.5</b>	<b>173.5</b>	<b>178.0</b>	<b>172.0</b>	<b>129.5</b>	<b>129.5</b>	<b>129.5</b>

\*The staffing levels displayed in the above table represent full-time equivalents (FTEs). The number of FTEs for FYs 2003 through 2005 are estimates.

According to the Commission, the noticeable drop in its number of FTEs between FYs 2002 and 2003 was a direct result of ordered GRF expenditure reductions and hiring restrictions. Around 20 of what the Commission refer to as “line attorneys” have left in the last two years or so, and just five of those full-time staff attorneys have been replaced.



\*The FYs 2003 through 2005 annual percentages for the county reimbursement rate in the above graph are estimates.

In the ten-year period covering FYs 1992 through 2001, the Commission’s annual county reimbursement rate ranged between 40% and 48%. Since that time, the Commission’s annual county reimbursement rate has declined to around 33%.

Pursuant to the Ohio Public Defender Law enacted in 1976, the state was required to reimburse counties for 50% of the costs associated with the provision of legal counsel to indigents. Effective July 1, 1979,

pursuant to Am. Sub. H.B. 204 of the 113th General Assembly, the provision was amended to state that, if the amount appropriated by the General Assembly in any fiscal year is insufficient to pay 50% of the costs associated with the provision of legal counsel to indigents, the amount of money paid is to be reduced proportionately so that each county is paid an equal percentage of its total costs.

Fiscal year 1991 was the last time the Commission was able to reimburse counties for 50% of their indigent defense costs.

<b>County-Level Indigent Defense Closed Cases Subject to State Reimbursement &amp; Branch Office Caseloads</b>						
<b>Fiscal Year</b>	<b>Appointed Counsel</b>	<b>Public Defender</b>	<b>Death Penalty</b>	<b>Multi-County</b>	<b>Trumbull County</b>	<b>Total Cases</b>
1992	65,126	143,044	107	5,172	3,081	216,530
1993	67,321	151,676	129	5,370	3,091	227,587
1994	68,740	156,523	106	5,910	3,066	234,345
1995	68,738	170,668	111	6,929	3,488	249,934
1996	75,351	164,008	122	7,156	3,265	249,902
1997	72,883	184,519	120	7,660	4,139	269,321
1998	76,199	180,957	147	7,966	4,160	269,429
1999	88,738	189,787	140	10,197	4,753	293,615
2000	95,305	207,718	133	11,013	4,783	318,952
2001	103,495	209,129	106	10,873	4,745	328,348
2002	112,891	200,285	123	11,831	5,638	330,768
2003*	120,229	213,304	131	12,600	6,004	352,268
2004*	128,044	227,169	140	13,419	6,394	375,166
2005*	136,367	241,935	149	14,291	6,810	399,552

\*The data associated with FYs 2003 through 2005 are estimates.

The table immediately above displays a breakdown of the total number of indigent defense cases that were closed annually from FYs 1992 through 2002, along with the estimated total number of indigent cases that are estimated to be closed annually from FYs 2003 through 2005. That breakdown shows closed cases that were directly handled by counties in some manner (the “Appointed Counsel,” “Public Defender,” and “Death Penalty” columns in the above table) and closed cases that were handled by the state in the form of the Office of the Ohio Public Defender (the “Multi-County” and “Trumbull County” columns in the above table).

In the 11-year period covering FYs 1992 through 2002, the number of indigent defense cases closed annually by counties and the Office of the Ohio Public Defender combined increased by more than half (52.8%), from 216,530 to 352,268.

In the 11-year period covering FYs 1992 through 2002, the number of indigent defense cases closed annually by counties increased by one-half (50.4%), from 208,277 to 313,299.

In the 11-year period covering FYs 1992 through 2002, the number of indigent defense cases closed annually by the Office of the Ohio Public Defender more than doubled (111.7%), from 8,253 to 17,469.

In the 11-year period covering FYs 1992 through 2002, counties typically handled around 95% of the total number of indigent defense cases closed annually by counties and the Office of the Ohio Public Defender combined.

<b>County-Level Indigent Defense Amount Subject to State Reimbursement &amp; Branch Office Costs</b>					
<b>Fiscal Year</b>	<b>Non-Capital Cases</b>	<b>Capital Cases</b>	<b>Multi-County</b>	<b>Trumbull County</b>	<b>Total Cases</b>
1992	\$39,829,961	\$1,863,669	\$1,022,538	\$481,055	\$43,197,223
1993	\$42,970,070	\$2,370,609	\$1,343,043	\$657,937	\$47,341,659
1994	\$45,297,398	\$1,851,788	\$1,466,811	\$574,328	\$49,190,325
1995	\$46,006,401	\$1,940,440	\$1,550,604	\$638,865	\$50,136,310
1996	\$47,134,045	\$1,822,116	\$1,641,873	\$661,383	\$51,259,417
1997	\$49,294,565	\$1,915,573	\$1,851,456	\$698,931	\$53,760,525
1998	\$54,973,281	\$2,479,280	\$2,052,513	\$732,528	\$60,237,602
1999	\$57,887,608	\$2,074,700	\$2,091,608	\$756,009	\$62,809,925
2000	\$65,038,160	\$1,766,673	\$2,359,659	\$819,094	\$69,983,586
2001	\$70,127,153	\$1,758,853	\$2,484,460	\$844,302	\$75,214,768
2002	\$79,916,063	\$1,978,301	\$2,507,604	\$860,862	\$85,262,830
2003*	\$86,942,387	\$2,000,000	\$2,648,392	\$915,569	\$92,506,348
2004*	\$92,628,000	\$2,100,000	\$2,780,812	\$907,715	\$98,419,527
2005*	\$98,879,000	\$2,200,000	\$2,820,890	\$934,696	\$104,834,586

\*The data associated with FYs 2003 through 2005 are estimates.

The table immediately above displays a breakdown of the annual costs to counties and the Office of the Ohio Public Defender for the provision of trial-level indigent defense services. That breakdown shows the costs associated with indigent defense cases that were directly handled by counties in some manner (the “Non-Capital Cases” and “Capital Cases” columns in the above table) and the costs associated with indigent defense cases handled by the state in the form of the Office of the Ohio Public Defender (the “Multi-County” and “Trumbull County” columns in the above table).

In the 11-year period covering FYs 1992 through 2002, the annual cost to counties of providing indigent defense service almost doubled (96.4%), from \$41.7 million to \$81.9 million, an increase of \$40.2 million.

In the 11-year period covering FYs 1992 through 2002, the annual cost to the Office of the Ohio Public Defender of providing trial-level indigent defense service more than doubled (124.0%), from \$1.5 million to \$3.4 million, an increase of \$1.9 million.

## PERMANENT AND TEMPORARY LAW

This section describes permanent and temporary law provisions contained in the executive budget that explicitly affect the duties, responsibilities, or fiscal operations of the Ohio Public Defender Commission.

### Permanent Law Provisions

#### Additional Court Costs (R.C. section 2949.091)

The bill:

- (1) Increases from \$11 to \$15 the additional costs a court generally is required to impose upon an offender who is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation.
- (2) Increases from \$11 to \$15 the amount that the court is required to add to any bail to be paid by a person who is charged with any offense other than a traffic offense that is not a moving violation.

Existing law prescribes procedures by which these additional moneys collected as costs are transmitted to the Treasurer of State for deposit into the GRF. Existing law also prescribes procedures by which the \$11 additional bail is either returned to the person or transmitted to the Treasurer of State for deposit into the GRF. A court may waive the payment of the additional \$11 costs only in specified circumstances, and a person may not be placed or held in a detention facility for failing to pay the additional \$11 costs or bail.

According to information provided by OBM this proposed increase in additional court costs will generate an additional \$8.0 million annually thereby allowing the Ohio Public Defenders Commission to reach a 33% county reimbursement rate in each of FYs 2004 and 2005. The Commission is of the opinion that, of the estimated \$8.0 million in additional court costs collected annually, about \$2.0 million in FY 2004 and nearly \$5.0 million in FY 2005 is actually appropriated for the purpose of funding its county reimbursement program.

### Temporary Law Provisions

#### Indigent Defense Office

Temporary law stipulates that the funds appropriated to GRF line item 019-404, Trumbull County - State Share, and State Special Revenue line item 019-610, Trumbull County - County Share, be used for the purpose of supporting an indigent defense office for Trumbull County. The Commission currently maintains a branch office in the City of Warren that provides indigent defense services in Trumbull County. Funding for the Trumbull office is drawn solely from these two line items. Trumbull County's contribution to the indigent defense office is deposited in the state treasury to the credit of Fund 4X7 (line item 019-610, Trumbull County - County Share).

This temporary law has been included in every one of the Commission's biennial operating budgets since first appearing in Am. Sub. H.B. 215 of the 122nd General Assembly, the main operating appropriations act covering FYs 1998 and 1999. Prior to that time, the indigent defense office also served several courts in neighboring Mahoning County.

**Multi-County Office**

Temporary law stipulates that the funds appropriated to GRF line item 019-403, Multi-County: State Share, and State Special Revenue line item 019-601, Multi-County: County Share, be used for the purpose of supporting the Commission's Multi-County Branch Office program. Under the program, the Commission provides indigent defense services to a ten-county region that covers the south and southeastern part of Ohio, including Adams, Athens, Brown, Fayette, Jackson, Meigs, Pickaway, Pike, Ross, and Washington counties. The program's regional office is located in Athens County, with branch offices situated in Ross and Washington counties. Funding for the Multi-County Branch Office program is drawn solely from these two line items. The local contribution provided by each of the ten participating counties is deposited in the state treasury to the credit of Fund 4C7 (line item 019-601, Multi-County: County Share).

Although the program has been in place since January 1991, this temporary law specifying its funding arrangement first appeared in the Commission's biennial operating budget in Am. Sub. H.B. 94 of the 124th General Assembly, the main operating appropriations act covering FYs 2002 and 2003.

**Training Account**

Temporary law specifies that the Commission use the funds appropriated to GRF line item 019-405, Training Account, to provide legal training programs at no cost for private appointed counsel who represent at least one indigent person at no cost (*pro bono*), and for state and county public defenders and attorneys who contract with the Commission to provide indigent defense services. This GRF line item essentially supports the Commission's Pro Bono Training program that uses contracts with private and non-profit training companies to provide continuing legal education (CLE) certified seminars to attorneys who practice criminal indigent defense law.

This temporary law has been included in every one of the Commission's biennial operating budgets since first appearing in Am. Sub. H.B. 171 of the 117th General Assembly, the main operating appropriation act covering FYs 1988 and 1989, but for several biennia the training program was only open to attorneys willing to then provide indigent defense services for one person. In Am. Sub. H.B. 283 of the 123rd General Assembly, the main operating appropriations act covering FYs 2000 and 2001, this temporary law was modified to open the training program to private appointed counsel, state and county defenders and attorneys who contract with the Ohio Public Defender.

**Federal Representation**

Temporary law states that the purpose of federal line item 019-608, Federal Representation, is to serve as the depository for reimbursement payments received by the Commission from the federal courts for providing legal representation in federal court cases at the request of the federal courts. This temporary law has been included in every one of the Commission's biennial operating budgets since first appearing in Am. Sub. H.B. 283 of the 123rd General Assembly, the main operating appropriations act covering FYs 2000 and 2001.

## REQUESTS NOT FUNDED

The difference, or variance, between what the Ohio Public Defender Commission requested for its biennial operating budget and the Governor’s recommended funding levels is summarized in the tables below and organized by program series.

Program Series: County-Level Indigent Defense						
Line Item	FY 2004 Requested	FY 2004 Recommended	Difference	FY 2005 Requested	FY 2005 Recommended	Difference
019-403	\$1,400,756	\$917,668	(\$483,088)	\$1,427,446	\$930,894	(\$496,552)
019-404	\$455,208	\$299,546	(\$155,662)	\$470,848	\$308,450	(\$162,398)
019-405	\$34,177	\$33,323	(\$854)	\$34,177	\$33,323	(\$854)
019-501	\$46,314,000	\$30,567,240	(\$15,746,760)	\$49,439,500	\$32,630,070	(\$16,809,430)
019-503	\$1,050,000	\$693,000	(\$357,000)	\$1,100,000	\$726,000	(\$374,000)
<b>GRF Totals</b>	<b>\$49,254,141</b>	<b>\$32,510,777</b>	<b>(\$16,743,364)</b>	<b>\$52,471,971</b>	<b>\$34,628,737</b>	<b>(\$17,843,234)</b>
019-601	\$2,040,343	\$1,923,780	(\$116,563)	\$2,132,667	\$1,991,509	(\$141,161)
019-610	\$663,982	\$624,841	(\$39,141)	\$704,522	\$658,764	(\$45,758)
<b>SSR Totals</b>	<b>\$2,704,325</b>	<b>\$2,548,621</b>	<b>(\$155,704)</b>	<b>\$2,837,189</b>	<b>\$2,650,303</b>	<b>(\$186,919)</b>
<b>Totals</b>	<b>\$51,958,466</b>	<b>\$35,059,398</b>	<b>(\$16,899,068)</b>	<b>\$55,309,160</b>	<b>\$37,279,040</b>	<b>(\$18,030,153)</b>

The requested amounts in the above table represent the Commission’s calculation of the costs to the GRF and related non-GRF funds if the state and county shares of the County Reimbursement and Branch Office programs were both set at 50%. Under the executive recommended funding levels, the state share of both programs is estimated at 33%. This means that the remainder of the annual costs of both programs, estimated at 67%, will be a county responsibility.

In addition, the Commission requested moneys (GRF line item 019-405) in each fiscal year sufficient to offer pro bono training to around 230 or so attorneys annually. Presumably, the slightly lower level of executive recommended funding means that a few attorneys that might otherwise have been offered the pro bono training program will not participate, perhaps around a half dozen or so.

Program Series: Public Defender Administration						
Line Item	FY 2004 Requested	FY 2004 Recommended	Difference	FY 2005 Requested	FY 2005 Recommended	Difference
019-321	\$1,632,311	\$1,430,057	(\$202,254)	\$1,663,044	\$1,351,494	(\$311,550)
019-605	\$379,099	\$285,533	(\$93,566)	\$387,714	\$285,533	(\$102,181)
<b>Totals</b>	<b>\$2,011,410</b>	<b>\$1,715,590</b>	<b>(\$295,820)</b>	<b>\$2,050,758</b>	<b>\$1,637,027</b>	<b>(\$413,731)</b>

For its Public Defender Administration program series, the Commission requested GRF and non-GRF funding sufficient to continue providing its FY 2003 level of services in each of FYs 2004 and 2005. The Commission received less funding than it calculated would be necessary to continue FY 2003 service levels by around \$300,000 in FY 2004 and by around \$400,000 in FY 2005. According to the Commission, the executive budget will not support the current number of staff and related maintenance and equipment costs associated with the Public Defender Administration program series. In response, the Commission has already started to eliminate full-time staff positions. Additionally, a planned upgrade of the Commission’s desktop computers, servers, and software will be delayed indefinitely.

<b>Program Series: State Legal Defense Services</b>						
<b>Line Item</b>	<b>FY 2004 Requested</b>	<b>FY 2004 Recommended</b>	<b>Difference</b>	<b>FY 2005 Requested</b>	<b>FY 2005 Recommended</b>	<b>Difference</b>
019-401	\$6,642,350	\$5,724,780	(\$917,570)	\$7,225,793	\$5,693,572	(\$1,532,221)
<b>Totals</b>	\$6,642,350	\$5,724,780	<b>(\$917,570)</b>	\$7,225,793	\$5,693,572	<b>(\$1,532,221)</b>

The amounts in the table immediately above depict the difference between the amounts that the Commission requested to provide direct legal representation to indigent adults, juveniles, and incarcerated individuals and the executive recommended funding levels. The Commission's requested amounts reflected its calculation of the cost of delivering its current level of direct legal representation services in each of the next two fiscal years. As the recommended levels of funding are less than what the Commission requested as continuation funding, it will have to reduce the annual operating costs of its State Legal Defense Services program series. Areas where the Commission will apparently look to cut expenditures include legal services contracts, expert witnesses, travel, and payroll. Presumably, payroll would cut voluntary departures or layoffs or some combination of both. For example, the Commission expects that two full-time staff will leave via an early retirement incentive (ERI) buyout.

As a result of staff reductions, including "line" attorneys, and an apparent ongoing hiring freeze, the remaining legal staff will have to carry heavy caseloads. From the Commission's perspective, this raises at least two troubling prospects: (1) where appropriate, raising the bar of admissibility, that is, the criteria used to decide whether the Commission will take a case, and by doing so, serving fewer clients, and (2) the possibility that the quality of the legal services provided will decline.

It also appears that the Commission will eliminate its Parole Revocation Program. Under this program, the Office of the Ohio Public Defender provides legal representation to persons charged with violating parole or provisions of post release control. In FY 2002, the Commission provided representation at parole revocation hearings in approximately 4,300 cases. If this program were eliminated, the annual savings to the Commission is estimated at about \$300,000.

## General Revenue Fund

### GRF 019-321 Public Defender Administration

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$1,661,190	\$1,706,534	\$1,647,604	\$1,446,822	<b>\$1,430,057</b>	<b>\$1,351,494</b>
	2.7%	-3.5%	-12.2%	-1.2%	-5.5%

**Source:** GRF

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A. (originally established by Am. Sub. H.B. 215 of the 122nd G.A., the main operating appropriations act covering FYs 1998 and 1999)

**Purpose:** This GRF line item provides funding for the Commission's administrative operation, including payroll, maintenance, and equipment costs. Prior to FY 1998, these operating costs were funded from three separate GRF line items: (1) 019-100, Personal Services, (2) 019-200, Maintenance, and (3) 019-300, Equipment. Pursuant to Am. Sub. H.B. 215 of the 122nd G.A., the main operating appropriations act covering FYs 1998 and 1999, these three GRF line items were eliminated and their purposes and funding were moved into two newly-created GRF line items: 019-321, Public Defender Administration, and 019-401, State Legal Defense Services. This change was part of a restructuring of the Commission's personal services, maintenance, and equipment costs along more programmatic lines.

**GRF 019-401 State Legal Defense Services**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$7,007,257	\$6,612,220	\$6,389,591	\$5,926,417	<b>\$5,724,780</b>	<b>\$5,693,572</b>
	-5.6%	-3.4%	-7.2%	<b>-3.4%</b>	<b>-0.5%</b>

**Source:** GRF

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A. (originally established by Am. Sub. H.B. 215 of the 122nd G.A., the main operating appropriations act covering FYs 1998 and 1999)

**Purpose:** This GRF line item provides funding for the payroll, maintenance, and equipment costs associated with the Commission's Legal Division, Death Penalty Division, Legal Resource Center, and County Representation Program/Trial Section. Roughly 90 percent of the line item's appropriation is split more or less evenly between two of those functional areas: (1) the Legal Services Division, and (2) the Death Penalty Division. The Legal Services Division provides direct legal representation primarily to persons who claim that they are unlawfully imprisoned or detained in a state correctional institution and to persons who have been charged with violating conditions of their release on parole or post release control. The Death Penalty Division provides, coordinates, and supervises legal representation for indigent criminal defendants in capital cases.

Prior to FY 1998, these operating costs associated with state legal defense services were funded from three separate GRF line items: (1) 019-100, Personal Services, (2) 019-200, Maintenance, and (3) 019-300, Equipment. Pursuant to Am. Sub. H.B. 215 of the 122nd G.A., the main operating appropriations act covering FYs 1998 and 1999, these three GRF line items were eliminated and their purposes and funding were moved into two newly-created GRF line items: 019-321, Public Defender Administration, and 019-401, State Legal Defense Services. This change was part of a restructuring of the Commission's personal services, maintenance, and equipment costs along more programmatic lines.

**GRF 019-403 Multi-County: State Share**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$1,089,431	\$1,168,604	\$1,071,734	\$903,765	<b>\$917,668</b>	<b>\$930,894</b>
	7.3%	-8.3%	-15.7%	<b>1.5%</b>	<b>1.4%</b>

**Source:** GRF

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; statutory authority for contractual arrangement resides in various sections of the Revised Code, including 120.04, 120.06, and 120.33 (originally established by Controlling Board on December 17, 1990)

**Purpose:** This GRF special purpose account provides funding for the Commission's Multi-County Branch Office which began operation on January 1, 1991. This branch office provides local indigent defense services to ten counties in south and southeastern Ohio. The ten counties are Adams, Athens, Brown, Fayette, Jackson, Meigs, Pickaway, Pike, Ross, and Washington. These ten participating counties have essentially each entered into a contract with the Commission under which the state provides indigent defense services in their respective counties. Branch offices are located in Athens, Ross, and Washington counties. In addition to employing state public defenders, the Commission contracts with private attorneys in all ten counties.

Each county's contribution to this branch office operation is deposited in the state treasury to the credit of Fund 4C7 (line item 019-601, Multi-County: County Share). The funding split between the state and county shares is the same as it is for the Commission's much larger statewide County Reimbursement program under which the state is responsible for up to 50 percent of a county's indigent defense costs.

**GRF 019-404 Trumbull County - State Share**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$386,362	\$396,577	\$352,951	\$301,694	<b>\$299,546</b>	<b>\$308,450</b>
	2.6%	-11.0%	-14.5%	<b>-0.7%</b>	<b>3.0%</b>

**Source:** GRF

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; statutory authority for contractual arrangement resides in various sections of the Revised Code, including 120.04, 120.06, and 120.33 (originally established by Am. Sub. H.B. 291 of the 115th G.A., the main operating appropriations act covering FYs 1984 and 1985)

**Purpose:** This GRF special purpose account helps support the Commission's Trumbull County Branch Office, which provides local indigent defense services in Trumbull County. The county has essentially entered into a contract with the Commission under which the state provides indigent defense services through a branch office located in the City of Warren and through contracts with local attorneys.

The county's contribution to the branch office is deposited in the state treasury to the credit of Fund 4X7 (line item 019-610, Trumbull County-County Share). The funding split between the state and county share is the same as it is for the Commission's much larger statewide County Reimbursement program under which the state is responsible for up to 50 percent of a county's indigent defense costs.

The name of this GRF special purpose account was changed from "Indigent Defense Office" in Am. Sub. H.B. 215 of the 122nd G.A., the main operating appropriations act covering FYs 1998 and 1999, to reflect the fact that the office no longer served several courts in neighboring Mahoning County.

**GRF 019-405 Training Account**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$45,575	\$44,200	\$37,075	\$39,183	<b>\$33,323</b>	<b>\$33,323</b>
	-3.0%	-16.1%	5.7%	<b>-15.0%</b>	<b>0.0%</b>

**Source:** GRF

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; statutory authority for the program resides in ORC 120.03(D)(2)(c) (originally established by Am. Sub. H.B. 171 of the 117th G.A., the main operating appropriations act covering FYs 1988 and 1989)

**Purpose:** This GRF special purpose account is used exclusively for the Commission's Pro Bono Training program, under which it contracts with private and non-profit training companies to provide continuing legal education (CLE) certified seminars to attorneys who practice criminal indigent defense law. The Commission pays the seminar companies a fee for each attorney who attends a seminar under the program. The seminar companies presently charge \$125 per attorney for a regular one-day seminar and \$250 per attorney for the two-day Rule 20 seminars.

The Commission allows private attorneys to attend seminars at no cost to the attorney. In exchange for free attendance, each attorney must provide one pro bono (for free) case for every seminar attended. Pro bono cases must be provided within one year of the seminar date, and pro bono attorneys are limited to two seminars per year. Public defenders also are limited to two seminars per year.

**GRF 019-501 County Reimbursement - Non-Capital Cases**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$31,772,111	\$33,975,744	\$31,320,936	\$28,173,220	<b>\$30,567,240</b>	<b>\$32,630,070</b>
	6.9%	-7.8%	-10.0%	<b>8.5%</b>	<b>6.7%</b>

**Source:** GRF

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; statutory authority and guidelines for the reimbursement program reside in various sections of the Revised Code, including 120.04, 120.18, 120.28, 120.33, 2941.51, and 2949.19 (originally established by Am. Sub. H.B. 164 of the 111th G.A., the act establishing state, county, and joint county public defenders)

**Purpose:** This GRF subsidy account is used to reimburse counties for up to 50 percent of their costs of operating county public defender offices, joint county public defender offices, and appointed counsel systems. Expenditures incurred for capital cases, however, are reimbursed through the Commission's GRF line item 019-503, County Reimbursements - Capital Cases. If funding in this subsidy account is insufficient to reimburse 50 percent of the costs for non-capital cases, then the reimbursement percentage for each of the public defender offices and appointed counsel systems is reduced equally.

**GRF 019-503 County Reimbursement - Capital Cases**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$874,588	\$874,837	\$866,520	\$809,901	<b>\$693,000</b>	<b>\$726,000</b>
	0.0%	-1.0%	-6.5%	<b>-14.4%</b>	<b>4.8%</b>

**Source:** GRF

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; statutory authority for this reimbursement program resides in ORC 120.35 (originally established by Am. Sub. H.B. 291 of the 115th G.A., the main operating appropriations act covering FYs 1984 and 1985)

**Purpose:** The GRF subsidy account is used to reimburse counties for up to 50 percent of their costs of defending persons accused of capital crimes. If funding in this subsidy account is insufficient to reimburse 50 percent of the costs for capital cases, then the reimbursement percentage is reduced equally for all counties.

**General Services Fund Group**

**101 019-602 Inmate Legal Assistance**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$57,776	\$59,119	\$55,895	\$27,443	<b>\$52,698</b>	<b>\$53,086</b>
	2.3%	-5.5%	-50.9%	<b>92.0%</b>	<b>0.7%</b>

**Source:** GSF: Quarterly legal services payments transferred from the GRF maintenance budget of the Ohio Department of Rehabilitation and Correction's Marion Correctional Institution

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A. (originally established by Controlling Board in 1978)

**Purpose:** This special account currently funds an inmate legal assistance program at the state's Marion Correctional Institution, a purpose it has served since 1991. Specifically covered are the payroll, maintenance, and equipment costs associated with one Commission attorney. The program started at the Marion Correctional Institution in response to a court case that led to a mandate that one attorney be located at the correctional institution to run the prison's law library. In 1987, the program shifted to one that utilized law school interns to provide more general legal assistance, before taking on its current focus in 1991, in which the attorney running the correctional institution's law library would also provide representation to inmates at parole revocation hearings.

**101 019-607 Juvenile Legal Assistance**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$419,835	\$395,368	\$49,231	\$0	\$0	\$0
	-5.8%	-87.5%	-100.0%	N/A	N/A

**Source:** GSF: Funding provided by the Ohio Department of Youth Services

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A. (originally established by Controlling Board on August 16, 1993)

**Purpose:** This special account captured the funding from an interdepartmental agreement under which the Department of Youth Services (DYS) provided moneys for the operation of the Commission's Juvenile Legal Assistance program. Under the program, which the Commission administered by hiring staff and providing the necessary equipment, legal assistance was provided to juveniles placed in DYS institutions so that juveniles could gain access to the courts for appeals. The program was established in FY 1994 in response to a decision by the U.S. Court of Appeals for the Sixth Circuit in the case of John L. v. Adams holding that juveniles have a constitutional right of access to the courts through attorneys provided by the state.

This interdepartmental agreement was terminated effective July 1, 2001. Since that time, DYS has utilized a personal services contract with Kaps & Associates to provide legal services to juveniles housed in the department's institutions

**406 019-603 Training and Publications**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$1,200	\$0	\$0	\$0	\$16,000	\$16,000
		N/A	N/A	N/A	0.0%

**Source:** GSF: (1) Fees received by the Commission for conducting educational seminars, and (2) sale of publications on topics concerning criminal law and procedure

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; ORC 120.03(E) (originally established by Am. Sub. H.B. 291 of the 115th G.A., the main operating appropriations act covering FYs 1984 and 1985)

**Purpose:** The Commission is required to expend the money in this special account for the sole purpose of conducting programs having a general objective of training and educating attorneys and others in the legal representation of indigent persons.

**407 019-604 County Representation**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$151,806	\$130,061	\$202,594	\$255,967	<b>\$255,789</b>	<b>\$259,139</b>
	-14.3%	55.8%	26.3%	<b>-0.1%</b>	<b>1.3%</b>

**Source:** GSF: Payments received from counties for 50 percent of the actual cost of legal representation when the State Public Defender is designated by a court or requested by a county public defender or joint county public defender to provide legal representation of an indigent person

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; ORC 120.06(D); (originally established by Am. Sub. H.B. 291 of the 115th G.A., the main operating appropriations act covering FYs 1984 and 1985)

**Purpose:** This special account can only be used by the State Public Defender to provide legal representation for indigent persons when designated by the court or requested by a county or joint county public defender. When the State Public Defender is so designated or requested, the appropriate county is billed for 50 percent of the cost of this representation and the reimbursement payments are deposited in the state treasury to the credit of Fund 407 (line item 019-604, County Representation).

**408 019-605 Client Payment**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$112,634	\$133,620	\$316,612	\$842,982	<b>\$285,533</b>	<b>\$285,533</b>
	18.6%	136.9%	166.3%	<b>-66.1%</b>	<b>0.0%</b>

**Source:** GSF: All moneys due the state for reimbursement for indigent defense legal services where defendants are ordered to pay back all or part of the costs of the representation

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; ORC 120.04(B)(5) (originally established by Am. H.B. 291 of the 115th G.A., the main operating appropriations act covering FYs 1984 and 1985)

**Purpose:** Pursuant to permanent law, all of the moneys deposited to the credit of this fund are to be used to: (1) appoint assistant state public defenders and to provide other personnel, equipment, and facilities necessary for the Commission's operation, (2) reimburse counties for the operation of county public defender offices, joint county public defender offices, and county appointed counsel systems pursuant to sections 120.18, 120.28, and 120.33 of the Revised Code, and (3) provide assistance to counties in the operation of county indigent defense systems.

## Federal Special Revenue Fund Group

### 3H4 019-609 Death Penalty Resource Center

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$37,758	\$0	\$0	\$0	\$0	\$0
		N/A	N/A	N/A	N/A

**Source:** FED: Grant from the Administrative Office of the United States Courts, Defender Services Division; no direct state match was required to receive this federal money, however, it was made on the condition that the state expend a designated amount of money on death penalty appeals and post-conviction cases

**Legal Basis:** Discontinued line item (originally established by Controlling Board on September 24, 1990)

**Purpose:** The Commission was awarded this federal funding for the purpose of operating a resource center staffed by around five people, mostly assistant state public defenders. The Center provided legal representation and resources in death penalty federal habeas corpus actions. The awarding of the grant was a result of the Commission being designated the Federal Death Penalty Resource Center for the Northern and Southern Districts in Ohio by the Sixth Circuit Task Force for Death Penalty Habeas Corpus. The federal grant started around FY 1992 and effectively ended around March 1996.

### 3S8 019-608 Federal Representation

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$233,176	\$489,584	\$681,617	\$554,864	\$351,428	\$355,950
	110.0%	39.2%	-18.6%	-36.7%	1.3%

**Source:** FED: Partial reimbursement payments received from federal courts as a result of federal courts appointing the Commission to provide legal representation in federal habeas corpus death penalty cases

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A. (originally established by Controlling Board on March 2, 1998)

**Purpose:** All of the moneys in this fund are used by the Commission's Death Penalty Division to support its litigation activity in the area of federal habeas corpus.

**3U7 019-614 Juvenile JAIBG Grant**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$0	\$68,171	\$31,667	\$0	\$0	\$0
	N/A	-53.5%	-100.0%	N/A	N/A

**Source:** FED: CFDA 16.523, Juvenile Accountability Incentive Block Grant (JAIBG)

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A. (originally established by Controlling Board on February 28, 2000)

**Purpose:** The Commission used the JAIBG grant to bolster its Juvenile Legal Assistance program, which provided a means for incarcerated juveniles to gain access to the courts for appeals. The JAIBG funds employed an assistant state public defender who interviewed and screened juveniles at Department of Youth Services' institutions, answered case related questions, and provided direct representation on appeal or other collateral pleadings in cases of arguable merit. The Department of Youth Services, which is the state agent for administering all federal juvenile justice funding awarded to Ohio, did not renew the Commission's JAIBG grant.

**3U8 019-615 Juvenile Challenge Grant**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$0	\$45,422	\$50,623	\$17,116	\$0	\$0
	N/A	11.5%	-66.2%	-100.0%	N/A

**Source:** FED: CFDA 16.549, State Challenge Activities

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A. (originally established by Controlling Board on February 28, 2000)

**Purpose:** The Commission used this essentially one-time federal State Challenge grant to bolster its Juvenile Legal Assistance program, which provided a means for incarcerated juveniles to gain access to the courts for appeals. The State Challenge funds employed one assistant state public defender and one dispositional advocate who focused on coordinating services and resources to children charged with committing illegal acts. Specific activities included providing direct representation to juvenile clients, providing training and technical assistance to public defenders and court appointed counsel, assisting courts and attorneys in finding alternatives to traditional incarceration for juveniles, expanding non-lawyer related support services and resources to public defenders and appointed counsel, offering public defenders and private counsel access to a centralized research brief bank, and distributing educational materials about juvenile due process rights to juveniles and their families.

## State Special Revenue Fund Group

### 4C7 019-601 Multi-County: County Share

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$1,214,356	\$1,324,707	\$1,455,745	\$1,748,325	<b>\$1,923,780</b>	<b>\$1,991,506</b>
	9.1%	9.9%	20.1%	<b>10.0%</b>	<b>3.5%</b>

**Source:** SSR: Payments from ten counties in south and southeastern Ohio for their portion of the costs of operating the Commission's Multi-County Branch Office

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; statutory authority for contractual relationship resides in ORC 120.04(C)(7) (originally established by Controlling Board on December 17, 1990)

**Purpose:** This special account provides funding for the Commission's Multi-County Branch Office which began operation on January 1, 1991. This branch office provides local indigent defense services to ten counties in south and southeastern Ohio. The ten counties are Adams, Athens, Brown, Fayette, Jackson, Meigs, Pickaway, Pike, Ross, and Washington. These ten participating counties have essentially each entered into a contract with the Commission under which the state provides indigent defense services in their respective counties. Branch offices are located in Athens, Ross, and Washington counties. In addition to employing state public defenders, the Commission contracts with private attorneys in all ten counties.

Each county's contribution to this branch office operation is deposited in the state treasury to the credit of Fund 4C7 (line item 019-601, Multi-County: County Share). The state's contribution is drawn from the Commission's GRF line item 019-403, Multi-County: State Share. The funding split between the state and county shares is the same as it is for the Commission's much larger statewide County Reimbursement program under which the state is responsible for up to 50 percent of a county's indigent defense costs.

**4X7 019-610 Trumbull County - County Share**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$429,860	\$449,339	\$501,157	\$569,569	<b>\$624,841</b>	<b>\$658,764</b>
	4.5%	11.5%	13.7%	<b>9.7%</b>	<b>5.4%</b>

**Source:** SSR: Payments from Trumbull County for their portion of the costs of operating the Commission's Trumbull County Branch Office

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; statutory authority for contractual relationship resides in ORC 120.04(C)(7) (originally established by Am. Sub. H.B. 215 of the 122nd G.A., the main operating appropriations act covering FYs 1998 and 1999)

**Purpose:** This special account captures the local contribution that assists in financing the Commission's Trumbull County Branch Office, which provides legal indigent defense services to Trumbull County. Prior to Am. Sub. H.B. 215 of 122nd G.A., the main operating appropriations act covering FYs 1998 and 1999, this revenue stream and its purpose resided in Fund 407, County Representation Fund. Starting with FY 1998, Fund 4X7 was created along with associated line item 019-610, Trumbull County-County Share. This accounting change was made in order to separate the Trumbull County Branch Office's finances from the other revenue streams that the Commission was collecting under its County Representation program. The state's share of those office costs was, and still is, drawn from the Commission's GRF line item 019-404.

**574 019-606 Legal Services Corporation**

2000	2001	2002	2003 Estimate	2004 Executive Proposal	2005 Executive Proposal
\$14,568,109	\$13,884,221	\$14,815,127	\$16,275,558	<b>\$14,305,700</b>	<b>\$14,305,800</b>
	-4.7%	6.7%	9.9%	<b>-12.1%</b>	<b>0.0%</b>

**Source:** SSR: (1) Interest-bearing trust accounts established and maintained by attorneys, law firms, or legal professional associations pursuant to ORC 4705.09 and 4705.10, (2) interest-bearing trust accounts established and maintained by title insurance agents or title insurance companies pursuant to ORC 3953.231, (3) additional filing fees collected by municipal, county, and common please courts on each new civil action or proceeding pursuant to ORC 1901.26, 1907.24, and 2303.201, and (4) gifts, bequests, donations, contributions, and income from investments

**Legal Basis:** Section 89 of Am. Sub. H.B. 94 of the 124th G.A.; ORC 120.52

**Purpose:** Moneys in the fund are used principally for the charitable purpose of distributing financial assistance to legal aid societies that provide civil legal services to indigents. Prior to FY 1994, the Commission was permitted to assess the fund for the reasonable costs of administering the state's legal aid society law, with the remainder of the revenue to be distributed to legal aid societies. Pursuant to Am. Sub. H.B. 215 of the 120th G.A., the main operating appropriations act covering FYs 1994 and 1995, the Ohio Legal Assistance Foundation, a charitable, tax exempt foundation, was created to administer the civil legal aid program and 4.5% of the money in the fund was reserved for the foundation's actual, reasonable costs of program administration.

Amended Substitute Senate Bill 219 of the 115th G.A., effective April 4, 1985, established the fund and its revenue stream, which was composed of a temporary additional filing fee on new civil actions and interest-bearing trust accounts established and maintained by attorneys, law firms, and professional legal associations. The temporary additional filing fee was \$5 for new civil actions in municipal and county courts and \$10 in new civil actions in common pleas courts. The temporary additional filing fee was eliminated effective January 1, 1987. In July 1, 1987, a \$1 additional filing fee was instituted on new civil actions.

The main operating appropriations act covering FYs 1990 and 1991, Am. Sub. H.B. 111 of the 118th G.A., increased the \$1 additional filing on new civil actions to \$4.

An exemption from the additional filing fee for new civil actions handled by the small claims divisions of municipal and county courts was removed starting in FY 1992.

Amended Substitute House Bill 405 of the 119th G.A., effective January 1, 1993, temporarily increased the pre-existing \$4 additional filing fee on new civil actions to: \$15 in municipal, county, and common pleas courts, and \$7 for the small claims divisions in municipal and county courts. These temporary filing fee increases were scheduled to be eliminated effective January 1, 2003, which would have reduced the additional filing fee back to its pre-existing \$4 on all new civil actions and proceedings.

The main operating appropriations act covering FYs 1996 and 1997, Am. Sub. H.B.

117 of the 121st G.A., effective January 1, 1996, increased the fund's revenue stream by including interest-bearing accounts established and maintained by title insurance agents or title insurance companies.

Amended Substitute House Bill 94 of the 124th General Assembly, the main operating appropriations act covering FYs 2002 and 2003, repealed the permanent law that would have otherwise reduced the additional filing fee on new civil actions and proceedings to \$4. Thus, all courts will continue to collect the \$7 and \$15 additional filing fees on all new civil actions and proceedings.

## LSC Budget Spreadsheet by Line Item, FY 2004 - FY 2005

Fund	ALI	ALI Title	2002	Estimated 2003	Executive 2004	% Change 2003 to 2004	Executive 2005	% Change 2004 to 2005
<b>PUB Public Defender Commission, Ohio</b>								
GRF	019-321	Public Defender Administration	\$ 1,647,604	\$1,446,822	\$ 1,430,057	-1.2%	\$ 1,351,494	-5.5%
GRF	019-401	State Legal Defense Services	\$ 6,389,591	\$5,926,417	\$ 5,724,780	-3.4%	\$ 5,693,572	-0.5%
GRF	019-403	Multi-County: State Share	\$ 1,071,734	\$903,765	\$ 917,668	1.5%	\$ 930,894	1.4%
GRF	019-404	Trumbull County - State Share	\$ 352,951	\$301,694	\$ 299,546	-0.7%	\$ 308,450	3.0%
GRF	019-405	Training Account	\$ 37,075	\$39,183	\$ 33,323	-15.0%	\$ 33,323	0.0%
GRF	019-501	County Reimbursement - Non-Capital Cases	\$ 31,320,936	\$28,173,220	\$ 30,567,240	8.5%	\$ 32,630,070	6.7%
GRF	019-503	County Reimbursement - Capital Cases	\$ 866,520	\$809,901	\$ 693,000	-14.4%	\$ 726,000	4.8%
<b>General Revenue Fund Total</b>			<b>\$ 41,686,412</b>	<b>\$ 37,601,002</b>	<b>\$ 39,665,614</b>	<b>5.5%</b>	<b>\$ 41,673,803</b>	<b>5.1%</b>
101	019-602	Inmate Legal Assistance	\$ 55,895	\$27,443	\$ 52,698	92.0%	\$ 53,086	0.7%
101	019-607	Juvenile Legal Assistance	\$ 49,231	\$0	\$ 0	N/A	\$ 0	N/A
406	019-603	Training and Publications	---	\$0	\$ 16,000	N/A	\$ 16,000	0.0%
407	019-604	County Representation	\$ 202,594	\$255,967	\$ 255,789	-0.1%	\$ 259,139	1.3%
408	019-605	Client Payment	\$ 316,612	\$842,982	\$ 285,533	-66.1%	\$ 285,533	0.0%
<b>General Services Fund Group Total</b>			<b>\$ 624,332</b>	<b>\$ 1,126,392</b>	<b>\$ 610,020</b>	<b>-45.8%</b>	<b>\$ 613,758</b>	<b>0.6%</b>
3S8	019-608	Federal Representation	\$ 681,617	\$554,864	\$ 351,428	-36.7%	\$ 355,950	1.3%
3U7	019-614	Juvenile JAIBG Grant	\$ 31,667	\$0	\$ 0	N/A	\$ 0	N/A
3U8	019-615	Juvenile Challenge Grant	\$ 50,623	\$17,116	\$ 0	-100.0%	\$ 0	N/A
<b>Federal Special Revenue Fund Group Total</b>			<b>\$ 763,907</b>	<b>\$ 571,980</b>	<b>\$ 351,428</b>	<b>-38.6%</b>	<b>\$ 355,950</b>	<b>1.3%</b>
4C7	019-601	Multi-County: County Share	\$ 1,455,745	\$1,748,325	\$ 1,923,780	10.0%	\$ 1,991,506	3.5%
4X7	019-610	Trumbull County - County Share	\$ 501,157	\$569,569	\$ 624,841	9.7%	\$ 658,764	5.4%
574	019-606	Legal Services Corporation	\$ 14,815,127	\$16,275,558	\$ 14,305,700	-12.1%	\$ 14,305,800	0.0%
<b>State Special Revenue Fund Group Total</b>			<b>\$ 16,772,029</b>	<b>\$ 18,593,452</b>	<b>\$ 16,854,321</b>	<b>-9.4%</b>	<b>\$ 16,956,070</b>	<b>0.6%</b>
<b>Total All Budget Fund Groups</b>			<b>\$ 59,846,679</b>	<b>\$ 57,892,826</b>	<b>\$ 57,481,383</b>	<b>-0.7%</b>	<b>\$ 59,599,581</b>	<b>3.7%</b>