Ohio Public Defender Commission

Senate Finance and Financial Institutions Committee

Joseph Rogers, Budget Analyst

Legislative Service Commission

May 5, 2005

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LSC Redbook
for the
Ohio Public Defender Commission

Senate Finance and Financial Institutions Committee

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Attachments:
- **Catalog of Budget Line Items**
- **LSC Budget Spreadsheet By Line Item: Executive to House Passed**
- **Compare Document: Permanent and Temporary Law**

May 5, 2005

Ohio Public Defender Commission

- Indigent defense reimbursement rate likely to be less than 30%
- Application fee and billing practice change proposed to offset GRF cuts
- Filing fee increase to assist Legal Aid Fund
- Maintaining legal services may prove problematic

OVERVIEW

Right to Counsel

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 that person 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:

- 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 noncapital cases; and
- 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 nonpartisan 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:

- Establishing a county public defender system;
- Establishing a joint county public defender system;
- Adopting a schedule to pay private appointed counsel;
- Contracting with the state public defender; and
- Contracting with a nonprofit 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.

FYs 2002-2005 Expenditure Reductions

As displayed in the table immediately below, as enacted during the two previous biennia, the Commission's original total GRF appropriations have been subsequently cut in each fiscal year since FY 2002. The executive branch, in response to ongoing revenue shortfalls, mandated all these cuts over the past several years.

Total GRF Appropriations	FY 2002	FY 2003	FY 2004	FY 2005
Original Appropriation	$45,108,157	$46,061,664	$39,915,614	$41,923,803
Adjusted Appropriation	$41,765,642	$38,565,127	$38,318,989	$39,408,375
Difference	($3,342,515)	($7,496,537)	($1,596,625)	($2,515,428)
Percentage Change	(7.4%)	(16.3%)	(4.0%)	(6.0%)

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. Since 2001, 33 attorneys have left the Commission, and only 13 new replacement attorneys have been hired. Other specific actions that have been taken included screening and limiting collect telephone calls from prison inmates, consolidating rented office space, limiting travel, and reducing the Commission's fleet of vehicles to a total of eight vehicles.

Executive Budget Summary

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

Program Series 1: 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 2005 level of services in each of FYs 2006 and 2007. The Commission received the same level of funding as was requested in each of the programs comprising this program series, which basically corresponds to the current level of funding in FY 2005. At this level of funding, most of the programs will continue at or near FY 2005 levels; however, there may not be sufficient resources to continue all of the services provided by the Prison Legal Services Unit at the three state prison reception centers and at parole revocation hearings.

The Ohio Public Defender Commission has proposed, and the executive budget contains, a provision that generates revenue from a nonrefundable $25 indigent defense application fee that would be used to support these program activities that would otherwise be in jeopardy. Of the fees so collected, 20% is transmitted to the Commission, which must deposit the remitted fees into the state treasury to the credit of the Client Payment Fund (Fund 408). Some of this additional revenue will be used to fund prison legal services. If this proposed fee is not enacted and the expected revenue gain is not forthcoming, revenues supporting this program will be shifted to cover other higher priority expenses, and the Commission will be forced to dispense with the Prison Legal Services Unit serving approximately 22,000 inmates per year, and with the provision of legal representation in parole revocation hearings. The elimination of these services would correspond to the loss of approximately five staff positions.

Program Series 2: Indigent Defense Reimbursement

For its Indigent Defense Reimbursement program series, the Commission requested GRF and non-GRF funding sufficient to continue providing its FY 2005 level of services in each of FYs 2006 and 2007. The Commission received less funding than it calculated would be necessary to continue the FY 2005 reimbursement rate of 31%. The recommended level of funding corresponds to a reimbursement rate of about 27% in FY 2006 and 26% in FY 2007.

The Commission has calculated that it would need additional GRF funding in the amount of $25,413,500 in FY 2006 and $28,843,000 in FY 2007 to reimburse counties for the full 50% of their annual cost of providing indigent defense legal services. Revenues that the counties will retain from the proposed new indigent defense application fee would help offset the likely reduction in the reimbursement rate. The additional fee revenue retained by the counties, just under $2 million each fiscal year, would be roughly equivalent to an increase in the reimbursement rate of between 1 and 2 percentage points.

Program Series 3: Ohio Legal Assistance Foundation

The executive budget fully funded the Commission's requested annual appropriation levels for the Ohio Legal Assistance Foundation program series. This essentially means that around $15.8 million in FY 2006 and $20.3 million in FY 2007 will be allocated for distribution to the state's legal aid societies. Of the remaining portion of each fiscal year's appropriation for line item 019-606, Legal Services Corporation, 4.5% ($745,618 in FY 2006 and $958,239 in FY 2007) will be reserved for the Foundation's actual, reasonable costs in administering the program, and $5,718 in FY 2006 and $5,810 in FY 2007 will

be charged as administrative costs borne by the Commission for salaries and telephone expenses associated with managing Foundation activities.

The executive budget modifies current law to increase the surcharge on civil actions not in a small claims division (from $15 to $25) and on civil actions in a small claims division (from $7 to $10) that are used for the charitable purpose of providing financial assistance to legal aid societies. The proposed fee increase includes decedent estate filings and marriage license applications. It is anticipated that these filing fee increases will potentially generate up to $8 million in additional revenue in each of FYs 2006 and 2007 for deposit to the credit of Fund 745, Legal Aid Fund.

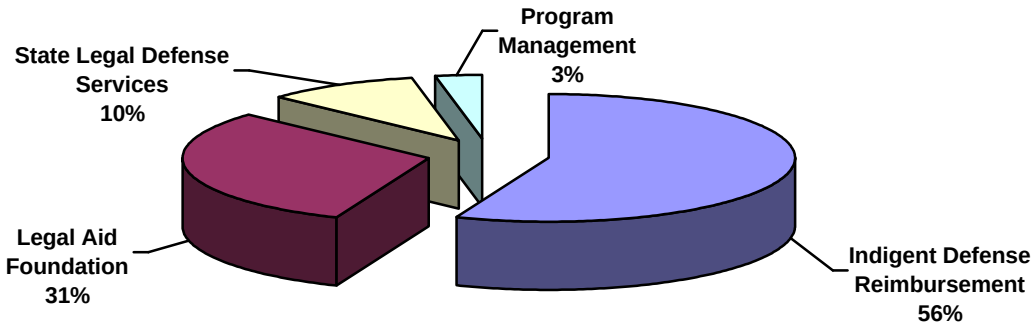
Program Series 4: Program Management

The executive budget provided funding levels for the Commission's Program Management program series that are $216,494, or 12%, more than the amount requested by the Commission for FY 2006, and $357,323, or 23%, more than the amount requested by the Commission for FY 2007. The additional executive recommended funding stems from the estimated revenues to be generated from the proposed $25 indigent defense application fee. The recommended funding will be largely devoted toward maintaining current FY 2005 levels of service into the next biennium, with the portion of the revenue generated from the $25 application fee be used to: (1) support staff that process reimbursement claims and (2) implement an information technology plan initiative to develop a web-based application for reimbursing counties for their indigent defense costs.

Expense by Program Series Summary

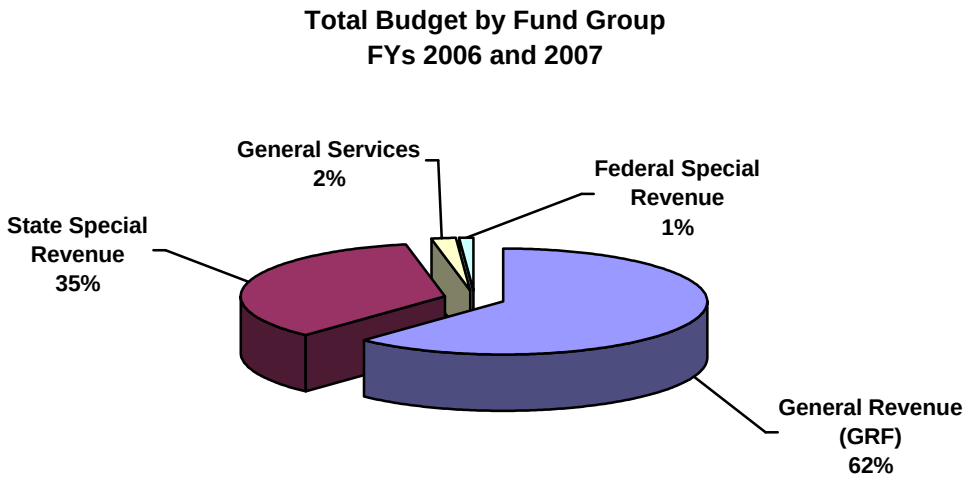
The pie chart immediately below shows the total recommended appropriations (FYs 2006 and 2007) by program series. This information is shown for the GRF and for all funds.

Total Budget by Program Series
FYs 2006 and 2007



Expense by Fund Group

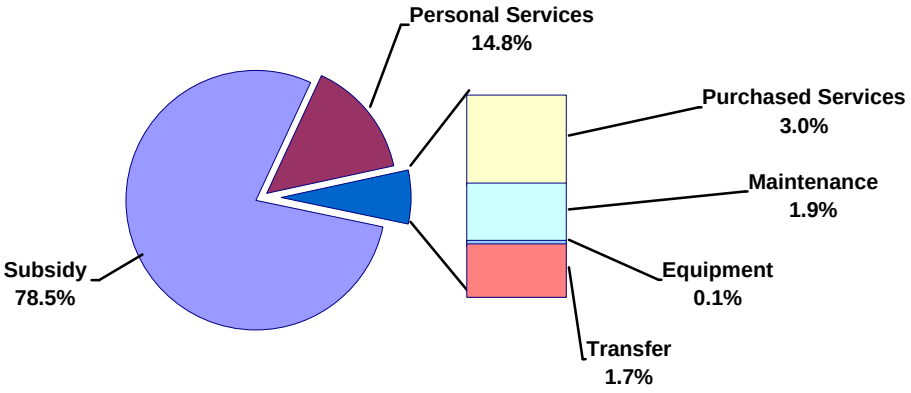
The pie chart immediately below shows the total recommended appropriations (FYs 2006 and 2007) by fund group. This information is shown for the GRF and for all funds.



Object of Expense Summary

The pie chart immediately below shows the total recommended appropriations (FYs 2006 and 2007) by major object of expense. This information is shown for the GRF and for all funds.

Total Budget by Object of Expense
FYs 2006 and 2007



Staffing Levels

The table immediately below summarizes the number of staff that the Commission paid, or will pay, on the last pay period of FYs 2002 through 2007. The number of paid staff are expressed in terms of FTEs, or full-time equivalents.

Ohio Public Defender Staffing Levels by Fiscal Year						
Program Series	**2002**	**2003**	**2004**	**2005***	**2006**	**2007**
State Legal Defense Services	102.0	73.5	74.5	71.5	71.5	71.5
Indigent Defense Reimbursement	33.0	28.5	27.5	27.5	27.5	27.5
Legal Assistance Foundation	0.0	0.0	0.0	0.0	0.0	0.0
Program Management	32.5	23.0	22.0	22.0	22.0	22.0
Totals	**167.5**	**125.0**	**124.0**	**121.0**	**121.0**	**121.0**

* The number of staff by program series to date in 200

Since FY 2002, the Commission has experienced a noticeable reduction in its staffing level, a decrease of 46.5 FTEs, or 27.8%. It is the goal of the Commission to maintain 121 staff members through FY 2007.

As of this writing, it appears unlikely that the Commission will be able to fully cover anticipated increases in payroll-related expenses with the amount of GRF funding recommended in the executive budget, and as a result, will look towards tapping the available cash balances in other appropriate Commission funds to fully meet its payroll obligations in FYs 2006 and 2007.

Permanent Law Provisions

The executive budget contains permanent law provisions related to the operations of the Commission, some of which are noted immediately below.

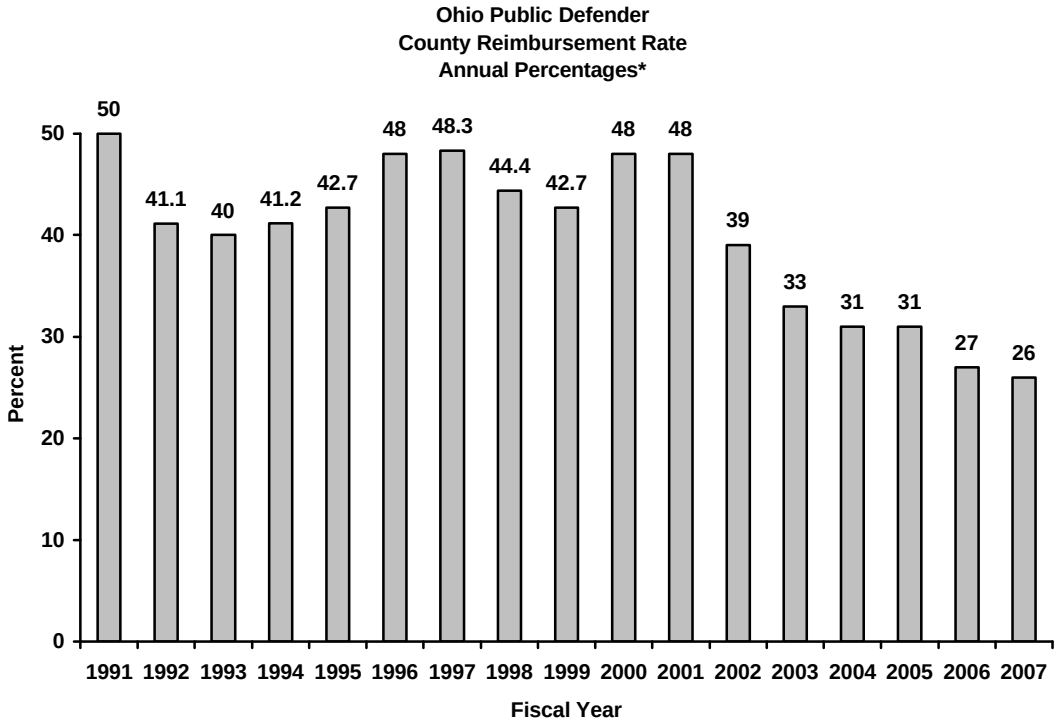
County Representation Billing Rate (R.C. 120.06(D), 120.13(F), and 120.23(I)). The executive budget contains permanent law allowing the Commission to bill counties for services based on the statewide reimbursement rate. As one of the five statutory mechanisms for the delivery of indigent defense services, a state public defender can be appointed by a court, or requested by a county public defender, to provide representation in any case, particularly when there is no locally available qualified counsel. When appointed in such matters, the Commission is required to bill a county 50% of the actual cost of the case, which is based on the original intention that the state and counties share equally in the cost of providing indigent defense. Any funds collected from counties through the billing process are credited to the County Representation Fund (Fund 407).

The proposed change in permanent law would require counties to pay the same percentage share whether they appoint a state public defender to a case or utilize one of the other local mechanisms for providing indigent defense services. If enacted, this provision would generate approximately $60,000 in additional revenues to the state in each of FYs 2006 and 2007. This proposed permanent law change would also allow the Ohio Public Defender Commission to bill counties for 100% of the cost for mitigation, investigation, experts, and expenses, and then allow the counties to seek reimbursement back from the state at the current reimbursement rate.

Filing Fees (R.C. 1901.26, 1907.24, and 2303.201). The executive budget modifies current law to increase the surcharge on civil actions not in a small claims division (from $15 to $25) and on civil actions in a small claims division (from $7 to $10) that are used for the charitable purpose of providing financial assistance to legal aid societies. The proposed fee increase includes decedent estate filings and marriage license applications. It is anticipated that these filing fee increases will potentially generate up to $8 million in additional revenue in each of FYs 2006 and 2007 for deposit to the credit of Fund 574, Legal Aid Fund.

Application Fee for Indigent Offenders (R.C. 120.36). The executive budget amends permanent law to provide that, if a person who is a defendant in a criminal case requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court in which the criminal case is filed must assess, unless the application fee is waived or reduced, a nonrefundable application fee of $25. The bill requires the clerk of courts to deposit all application fees with the county treasurer. The county must retain 80% of the application fees to offset the costs of providing legal representation to indigent persons. Each month, the county auditor must remit 20% of the application fees to the state public defender, who must deposit the remitted fees into the state treasury to the credit of the Client Payment Fund (Fund 408). It is anticipated that this application fee will potentially generate around $2.2 million in additional revenue in each of FYs 2006 and 2007. Assuming that were true, then counties statewide would collect $1.76 million in each year and the remainder, or $440,000, would be remitted to the state.

FACTS AND FIGURES



*The FYs 2005 through 2007 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 31%.

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.

County-Level Indigent Defense Closed Cases Subject to State Reimbursement & Branch Office Caseloads						
Fiscal Year	**Appointed Counsel**	**Public Defender**	**Death Penalty**	**Multi-County**	**Trumbull County**	**Total Cases**
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	126,356	240,244	108	11,977	6,330	385,015
2004	131,009	246,218	131	12,892	5,089	395,339
2005*	139,530	260,450	140	13,590	5,800	419,510
2006*	148,600	277,380	150	14,470	6,180	446,780
2007*	158,260	295,410	160	15,410	6,580	475,820

*The data associated with FYs 2005 through 2007 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 2004, along with the estimated total number of indigent cases that are estimated to be closed annually from FYs 2005 through 2007. 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 Commission (the "Multi-County" and "Trumbull County" columns in the above table).

In the 13-year period covering FYs 1992 through 2004, the number of indigent defense cases closed annually by counties and the Office of the Ohio Public Defender Commission combined increased by roughly one-half (54.7%), from 216,530 to 395,339.

In the 13-year period covering FYs 1992 through 2004, the number of indigent defense cases closed annually by counties increased by roughly one-half (55.2%), from 208,277 to 377,358.

In the 13-year period covering FYs 1992 through 2004, the number of indigent defense cases closed annually by the Office of the Ohio Public Defender Commission more than doubled (117.8%), from 8,253 to 17,981.

In the 13-year period covering FYs 1992 through 2004, 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 Commission combined.

County-Level Indigent Defense Amount Subject to State Reimbursement & Branch Office Costs					
Fiscal Year	**Non-Capital Cases**	**Capital Cases**	**Multi-County**	**Trumbull County**	**Total Cases**
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	$88,592,159	$2,141,417	$2,585,325	$863,038	$94,181,939
2004	$92,160,364	$2,501,675	$2,630,153	$875,049	$98,166,241
2005*	$99,749,000	$2,200,000	$2,671,059	$872,201	$105,492,260
2006*	$106,726,000	$2,500,000	$2,857,000	$904,000	$112,987,000
2007*	$113,551,000	$2,500,000	$2,883,000	$912,000	$119,846,000

*The data associated with FYs 2005 through 2007 are estimates.

The table immediately above displays a breakdown of the annual costs to counties and the Office of the Ohio Public Defender Commission 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 13-year period covering FYs 1992 through 2004, the annual cost to counties of providing indigent defense service more than doubled (127.1%), from $41.7 million to $94.7 million, an increase of $53 million.

In the 13-year period covering FYs 1992 through 2004, the annual cost to the Office of the Ohio Public Defender Commission of providing trial-level indigent defense service more than doubled (133.3%), from $1.5 million to $3.5 million, an increase of $2.0 million.

MASTER TABLE: EXECUTIVE'S RECOMMENDATIONS FOR FY 2006 AND FY 2007

The following table provides a comprehensive presentation of the Executive's recommendations for each of the agency's line items and the programs each line item supports. Please note that some line items may provide funding for multiple program series and/or programs. See the Analysis of Executive Proposal section for more information on specific program funding.

Executive Recommendations for FY 2006 and FY 2007, By Line Item and Program

Fund	ALI	Title	FY 2006	FY 2007
		General Revenue Fund		
GRF	**019-321**	**Public Defender Administration**	**$ 1,295,570**	**$ 1,262,439**
		Program Series 1: State Legal Defense Services		
		Program 01.05: Legal Resource Center	$ 450	$ 450
		Program Series 4: Program Management		
		Program 04.01: Program Management	$ 1,295,120	$ 1,261,989
GRF	**019-401**	**State Legal Defense Services**	**$ 5,744,601**	**$ 5,704,117**
		Program Series 1: State Legal Defense Services	$ 5,569,715	$ 5,526,364
		Program 01.01: Appeals and Postconviction Representat	$ 1,721,382	$ 1,746,887
		Program 01.02: Death Penalty Representation	$ 2,564,960	$ 2,667,319
		Program 01.03: Intake and Prison Legal Services	$ 756,361	$ 579,102
		Program 01.04: Juvenile Legal Assistance	$ 323,532	$ 327,470
		Program 01.05: Legal Resource Center	$ 203,480	$ 205,586
		Program Series 4: Program Management		
		Program 04.01: Program Management	$ 174,886	$ 177,753
GRF	**019-403**	**Multi-County: State Share**	**$ 823,620**	**$ 823,620**
		Program Series 2: Indigent Defense Reimbursement		
		Program 02.01: Indigent Defense Reimbursement	$ 823,620	$ 823,620
GRF	**019-404**	**Trumbull County-State Share**	**$ 256,380**	**$ 256,380**
		Program Series 2: Indigent Defense Reimbursement		
		Program 02.01: Indigent Defense Reimbursement	$ 256,380	$ 256,380
GRF	**019-405**	**Training Account**	**$ 31,324**	**$ 31,324**
		Program Series 2: Indigent Defense Reimbursement		
		Program 02.02: Training Account	$ 31,324	$ 31,324
GRF	**019-501**	**County Reimbursement**	**$ 30,000,000**	**$ 30,000,000**
		Program Series 2: Indigent Defense Reimbursement		
		Program 02.01: Indigent Defense Reimbursement	$ 30,000,000	$ 30,000,000
		General Revenue Fund Subtotal	**$ 38,151,495**	**$ 38,077,880**
		General Services Fund Group		
Fund 101	**019-602**	**Inmate Legal Assistance**	**$ 53,086**	**$ 32,338**
		Program Series 1: State Legal Defense Services		
		Program 01.03: Intake and Prison Legal Services	$ 53,086	$ 32,338
Fund 406	**019-603**	**Training and Publications**	**$ 16,000**	**$ 16,000**
		Program Series 4: Program Management		
		Program 04.01: Program Management	$ 16,000	$ 16,000
Fund 407	**019-604**	**County Representation**	**$ 186,146**	**$ 188,810**
		Program Series 1: State Legal Defense Services		
		Program 01.02: Death Penalty Representation	$ 186,146	$ 188,810
Fund 408	**019-605**	**Client Payments**	**$ 614,027**	**$ 762,106**
		Program Series 1: State Legal Defense Services	$ 91,389	$ 308,107
		Program 01.02: Death Penalty Representation	$ 91,389	$ 97,640
		Program 01.03: Intake and Prison Legal Services	$ -	$ 210,467
		Program Series 4: Program Management		
		Program 04.01: Program Management	$ 522,638	$ 453,999
		General Services Fund Subtotal	**$ 869,259**	**$ 999,254**

Executive Recommendations for FY 2006 and FY 2007, By Line Item and Program				
Fund	**ALI**	**Title**	**FY 2006**	**FY 2007**
Federal Special Revenue Fund Group				
Fund 3S8	**019-608**	**Federal Representation**	**$ 380,484**	**$ 315,287**
		Program Series 1: State Legal Defense Services		
		Program 01.02: Death Penalty Representation	$ 380,484	$ 315,287
Federal Special Revenue Fund Subtotal			**$ 380,484**	**$ 315,287**
State Special Revenue Fund Group				
Fund 4C7	**019-601**	**Multi-County: County Share**	**2,028,309**	**2,104,367**
		Program Series 2: Indigent Defense Reimbursement		
		Program 02.01: Indigent Defense Reimbursement	$ 2,028,309	$ 2,104,367
Fund 4X7	**019-610**	**Trumbull County-County Share**	**$ 642,106**	**$ 665,860**
		Program Series 2: Indigent Defense Reimbursement		
		Program 02.01: Indigent Defense Reimbursement	$ 642,106	$ 665,860
Fund 574	**019-606**	**Legal Services Corporation**	**$ 16,575,000**	**$ 21,300,000**
		Program Series 3: Ohio Legal Assistance Foundation		
		Program 03.01: Ohio Legal Assistance Foundation	$ 16,569,282	$ 21,294,190
		Program Series 4: Program Management		
		Program 04.01: Program Management	$ 5,718	$ 5,810
State Special Revenue Fund Subtotal			**$ 19,245,415**	**$ 24,070,227**
Total Agency Funding			**$ 58,646,653**	**$ 63,462,648**

ANALYSIS OF EXECUTIVE PROPOSAL

What follows is LSC fiscal staff's analysis of the Ohio Public Defender Commission's biennial budget covering FYs 2006 and 2007 as contained in the executive budget. The presentation of that budget information is organized around the following four program series.

- ***Program Series 1: State Legal Defense Services***
- ***Program Series 2: Indigent Defense Reimbursement***
- ***Program Series 3: Ohio Legal Assistance Foundation***
- ***Program Series 4: Program Management***

Program Series 1 — State Legal Defense Services

Purpose: Provides legal representation and services to indigent adults, juveniles, and incarcerated individuals in state and federal courts when Ohio law, the Ohio Constitution, or the U.S. Constitution requires representation.

The following table shows the line items that are used to fund the State Legal Defense Services program series, as well as the Governor's recommended funding levels.

Fund	ALI	Title	FY 2006	FY 2007
General Revenue Fund				
GRF	019-321	Public Defender Administration	$450	$450
GRF	019-401	State Legal Defense Services	$5,569,715	$5,526,364
		General Revenue Fund Subtotal	**$5,570,165**	**$5,526,814**
General Services Fund				
101	019-602	Inmate Legal Assistance	$53,086	$32,338
407	109-604	County Representation	$186,146	$188,810
408	019-605	Client Payments	$91,389	$308,107
		General Services Fund Subtotal	**$330,621**	**$529,255**
Federal Special Revenue Fund				
3S8	019-608	Federal Representation	$380,484	$315,287
		Federal Special Revenue Fund Subtotal	**$380,484**	**$315,287**
Total Program Series Funding: State Legal Defense Services			**$6,281,270**	**$6,371,356**

This analysis focuses on the following specific programs within the State Legal Defense Services program series:

- ***Program 1: Appeals and Postconviction Representation***
- ***Program 2: Death Penalty Representation***
- ***Program 3: Intake and Prison Legal Services***
- ***Program 4: Juvenile Legal Assistance***
- ***Program 5: Legal Resource Center***

Program 1: Appeals and Postconviction Representation

Program Description: This program provides legal representation in state and federal courts to indigent persons who claim they are unlawfully incarcerated. Attorney staff, with the assistance of support staff, review the claims of unlawful incarceration of indigent person to determine whether their claims have arguable merit. If arguable merit is present, attorney staff litigate the claim in the appropriate court. This program has nine staff attorneys and three supervising attorneys who provide representation in over 800 cases per year where the indigent claim unlawful incarceration.

Group	Fund	ALI	Title	FY 2006	FY 2007
GRF	GRF	019-401	State Legal Defense Services	$1,721,382	$1,746,887
Total Program Funding:			**Appeals and Postconviction Representation**	**$1,721,382**	**$1,746,887**

Funding Source: GRF

Line Items: See above table

Implication of Executive Recommendation: Although the executive budget fully funded the Commission's requested amounts for this program, with the ongoing problem of attorney attrition, the remaining attorneys will have difficulty maintaining the same level of legal services in FYs 2006 and 2007. Attorneys and support staff will face increasing workloads, and more clients will face longer delays in the delivery of services or no services at all.

The loss of attorney staff may also likely lead to reductions in the number of cases that can be handled under this program, and longer delays in the delivery of existing services. Given that there are more than 43,000 prisoners incarcerated in Ohio and a total of 12 attorneys in this program, the Office of the Ohio Public Defender Commission has had to develop criteria for screening the number of petitions. For example, legal representation is not provided to inmates who pleaded guilty and did not have a trial.

In FY 2003, the attorneys in this program closed 2,234 cases. In sharp contrast, through 11-plus months of FY 2004, the Office of the Public Defender Commission closed approximately 1,698 cases, a reduction of 536 closed cases from the prior fiscal year. As a result of the loss of staff and the corresponding inability to offer the same levels of services, the Office of the Public Defender fears there has been an increase in the probability that an unlawfully imprisoned person will fail to get legal representation services or such services will be unreasonably delayed.

Temporary and Permanent Law Provisions: None

Program 2: Death Penalty Representation

Program Description: The purpose of this program is to provide competent legal counsel to indigent persons under the sentence of death. The program's services include providing of legal counsel to Ohio's death row inmates on direct appeal, state postconviction, federal habeas corpus, and clemency appeals. The program also provides legal assistance, criminal investigation and mitigation, and trial services to private appointed attorneys in such cases. This program also supports training seminars on death penalty law to help ensure that the state bar meets requirements imposed under Ohio Supreme Court Superintendence Rule 20.

Group	Fund	ALI	Title	FY 2006	FY 2007
GRF	GRF	019-401	State Legal Defense Services	$2,564,960	$2,667,319
GSF	407	019-604	County Representation	$186,146	$188,810
GSF	408	019-605	Client Payment	$91,389	$97,640
FED	3S8	019-608	Federal Representation	$380,484	$315,287
			Total Program Funding: Death Penalty Representation	**$3,222,979**	**$3,269,056**

Funding Source: (1) GRF, (2) payments received from counties for 50% of the actual cost of legal representation when the Office of the Ohio Public Defender Commission 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, (3) 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, and (4) 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.

Line Items: See above table

Implication of Executive Recommendation: The executive budget fully funded the Ohio Public Defender Commission's request for this program, all of which the Commission will allocate toward maintaining current FY 2005 levels of service. The Commission has striven to reduce program costs by seeking reimbursements from the courts for the cost of expert witnesses and reducing travel. From the perspective of the Commission, any further expenditure reductions will translate into a decrease in legal services.

The program has 17 of 20 attorneys available to work on capital appeals, postconviction, and habeas corpus cases. The remaining three attorneys focus on capital trial cases. In FYs 2006 and 2007, the demand for services in this program may increase slightly as prior amendments to the Ohio Constitution and the postconviction statute has increased the pace of capital cases moving into federal habeas corpus. This creates a need for more legal counsel in complex habeas litigation and the Office of the Ohio Public Defender Commission will be called on to fill this need.

Temporary Law Provisions

Federal Representation (Section 209.48). A temporary law provision contained in the executive budget 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.

Program 3: Intake and Prison Legal Services

Program Description: This program consists of three units: (1) Intake, which fields calls, handles routine questions, and receives initial requests for legal representation, (2) Records Management, which opens new case files, gathers relevant documents, delivers the files to supervisors for attorney assignment, and generates statistical reports, and (3) Prison Legal Services, which provides legal advice to inmates at the three reception centers in Ohio's prison system. Incoming inmates receive an orientation, information regarding their legal rights, and an opportunity to speak with an attorney regarding their case. The program also provides representation in select parole revocation matters.

Group	Fund	ALI	Title	FY 2006	FY 2007
GRF	GRF	019-401	State Legal Defense Services	$756,361	$579,102
GSF	101	019-602	Inmate Legal Assistance	$53,086	$32,338
GSF	408	019-605	Client Payment	$0	$210,467
	Total Program Funding:		**Intake and Prison Legal Services**	**$809,447**	**$821,907**

Funding Source: (1) GRF, (2) 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, and (3) quarterly legal services payments transferred from the GRF maintenance budget of the Ohio Department of Rehabilitation and Correction's Marion Correctional Institution

Line Items: See above table

Implication of Executive Recommendation: Although the executive budget fully funded the Commission's requested amounts for this program, the recommended level of funding may not support the continuation of existing levels of services for all activities within this program. As it stands now, the Intake and Records Management units in this program will likely continue to operate at the same level as in the FY2004-2005 biennium, despite expected increases in the volume of workload. As a result, it may take longer to schedule interviews, screen cases, and respond to inquiries. There may, however, not be insufficient resources, however, to continue both the services provided by the Prison Legal Services Unit at the reception centers, and legal representation at parole revocations hearings.

The Ohio Public Defender Commission has proposed, and the executive budget contains, a provision that generates revenue from a nonrefundable $25 indigent defense application fee that would be used to support these program activities that would otherwise be in jeopardy. Of the fees so collected, 20% is transmitted to the Ohio Public Defender Commission, who must deposit the remitted fees into the state treasury to the credit of the Client Payment Fund (Fund 408)

In FYs 2006 and 2007, an estimated $448,000 and $477,000, respectively, is expected to be remitted to the Ohio Public Defender Commission in the form of application fee revenues to be deposited to the credit of Fund 408. The revenues from the application fee will be used to fund: (1) support staff that process reimbursement claims, (2) prison legal services activities, and (3) an information technology plan initiative to develop a web-based application for reimbursing counties for their indigent defense costs.

If this proposed fee is not enacted and the expected revenue gain is not forthcoming, revenues supporting this program will be shifted to cover other higher priority expenses, and the Ohio Public Defender Commission will be forced to dispense with the Prison Legal Services Unit serving approximately 22,000 inmates per year, and with the provision of legal representation in parole revocation hearings. The elimination of these services would correspond to the loss of approximately five staff positions.

Permanent Law Provision

Indigent Defense Application Fee (R.C. 120.36). The executive budget amends permanent law to provide that, if a person who is a defendant in a criminal case requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court in which the criminal case is filed must assess, unless the application fee is waived or reduced, a nonrefundable application fee of $25. The bill requires the clerk of courts to deposit all application fees with the county treasurer. The county must retain 80% of the application fees to offset the costs of providing legal representation to indigent persons. Each month, the county auditor must remit 20% of the application fees to the Ohio Public Defender Commission, who must deposit the remitted fees into the state treasury to the credit of the Client Payment Fund (Fund 408).

Program 4: Juvenile Legal Assistance

Program Description: The purpose of this program is to provide legal assistance and representation to juveniles who have been committed to the Department of Youth Services. Upon entering a DYS correctional facility, juveniles receive an orientation from staff attorneys and have an opportunity to have their case reviewed. Currently, around 1,800 juveniles per year are committed to the care and custody of DYS. Additional activities include gathering general information for the juvenile, correcting sentencing errors, filing motions in juvenile court, and representing juveniles on appeal. With limited staff resources, not every case can be heard. Those cases with the strongest issues and the highest probability for relief will be processed.

The program also coordinates and provides training to defense attorneys who handle juvenile work and provides legislative advocacy on right to counsel issues and other substantive issues involving children in the juvenile justice system.

Group	Fund	ALI	Title	FY 2006	FY 2007
GRF	GRF	019-401	State Legal Defense Services	$323,532	$327,470
	Total Program Funding:		**Juvenile Legal Assistance**	**$323,532**	**$327,470**

Funding Source: GRF

Line Items: See above table

Implication of Executive Recommendation: The executive budget fully funded the Ohio Public Defender Commission's request for this program, all of which the Commission will allocate toward maintaining current FY 2005 levels of service. At this point in time, all of the costs for this program are funded with GRF moneys. The Commission is exploring the possibility of having DYS pay for a some of the expenses related to this program, specifically those expenses related to the investigation of issues pertaining to conditions of confinement.

Temporary and Permanent Law Provisions: None

Program 5: Legal Resource Center

Program Description: The purpose of this program is to support the Commission's Law Library, which is maintained pursuant to section 120.04(B)(1) of the Revised Code requiring the Ohio Public Defender Commission to maintain an office equipped with a library of adequate size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment. The Law Library maintains a collection of print and electronic media materials to be used by Commission staff. Reference and research resources are also provided to all Commission staff, county public defenders, appointed counsel, and correctional institution librarians.

Group	Fund	ALI	Title	FY 2006	FY 2007
GRF	GRF	019-321	Public Defender Administration	$450	$450
GRF	GRF	019-401	State Legal Defense Services	$203,480	$205,586
Total Program Funding: Legal Resource Center				**$203,930**	**$206,036**

Funding Source: GRF

Line Items: See above table

Implication of Executive Recommendation: The executive budget fully funded the Ohio Public Defender Commission's request for this program, all of which the Commission will allocate toward maintaining current FY 2005 levels of service. As this program focuses on legal research, and because subscription based on-line services are emphasized, the major factor that drives the cost of this program are publisher prices, which steadily increase every year. There has been downsizing in this program in response to recent funding cuts. Several support staff were laid off in April 2003, and others have been lost to attrition, including paralegals. The remaining library staff has filled much of the legal research void left by these vacated positions. The Commission will continue to make every effort to expend these funds in the most cost effective and expedient manner. The collection of materials is continually evaluated to determine if lesser-used materials can be cancelled, and the Commission believes it can no longer eliminate materials without compromising the service to the legal staff and clientele.

Temporary and Permanent Law Provisions: None

Program Series 2 Indigent Defense Reimbursement

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 Indigent Defense Reimbursement program series, as well as the Governor's recommended funding levels.

Fund	ALI	Title	FY 2006	FY 2007
General Revenue Fund				
GRF	019-403	Multi-County: State Share	$823,620	$823,620
GRF	019-404	Trumbull County-State Share	$256,380	$256,380
GRF	019-405	Training Account	$31,324	$31,324
GRF	019-501	County Reimbursement	$30,000,000	$30,000,000
		General Revenue Fund Subtotal	**$31,111,324**	**$31,111,324**
State Special Revenue Fund				
4C7	019-601	Multi-County: County Share	2,028,309$	$2,104,367
4X7	019-610	Trumbull County-County Share	$642,106	$665,860
		State Special Revenue Fund Subtotal	**$2,670,415**	**$2,770,227**
Total Program Series Funding: Indigent Defense Reimbursement			**$33,781,739**	**$33,881,551**

This analysis focuses on the following specific programs within the Indigent Defense Reimbursement program series:

- ***Program 1: Indigent Defense Reimbursement***
- ***Program 2: Pro Bono Training Program***

Program 1: Indigent Defense Reimbursement

Program Description: Under this program, the Ohio Public Defender Commission subsidizes counties for the cost of providing counsel to indigent persons in criminal and juvenile matters pursuant to the requirements of sections 120.18, 120.28, and 120.33 through 120.35 of the Revised Code. The Revised Code stipulates that the Ohio Public Defender Commission shall reimburse the counties 50% of the costs of operating their local indigent defense systems, unless the legislature appropriates less funding than needed to reimburse at 50%, in which case each county receives a reduced share. The Indigent Defense Reimbursement 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. 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 nonprofit corporation. Most counties use a county public defender office and/or appointed counsel system.

The program also funds the operations of counties that contract with the state public defender in lieu of direct reimbursement. The Indigent Defense Reimbursement 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.

Group	Fund	ALI	Title	FY 2006	FY 2007
GRF	GRF	019-403	Multi-County: State Share	$823,620	$823,620
GRF	GRF	019-404	Trumbull County-State Share	$256,380	$256,380
GRF	GRF	019-501	County Reimbursement	$30,000,000	$30,000,000
SSR	4C7	019-601	Multi-County: County Share	$2,028,309	$2,104,367
SSR	4X7	019-610	Trumbull County-County Share	642,106	665,860
	Total Program Funding:		**Indigent Defense Reimbursement**	**$33,750,415**	**$33,850,227**

Funding Source: (1) GRF, (2) payments from ten counties in south and southeastern Ohio for their portion of the costs of operating the Commission's Multi-County Branch Office, and (3) payments from Trumbull County for their portion of the costs of operating the Commission's Trumbull County Branch Office

Line Items: See above table

Implication of Executive Recommendation: The executive budget appropriates $33.8 million in FY 2006 and $33.9 million in FY 2007 for this program, which is about $1.1 million less than the Commission requested in each fiscal year. This level of funding is not expected to allow the Commission to reimburse counties at the current FY 2005 level of 31% of their annual cost of providing indigent defense legal services. The recommended level of funding corresponds to a reimbursement rate of about 27% in FY 2006 and 26% in FY 2007.

The Commission has calculated that it would need additional GRF funding in the amount of $25,413,500 in FY 2006 and $28,843,000 in FY 2007 to reimburse counties for the full 50% of their annual cost of providing indigent defense legal services. Revenues that the counties will retain from the proposed new indigent defense application fee would help offset the likely reduction in the reimbursement rate. The additional fee revenue retained by the counties, just under $2 million each fiscal year, would be roughly equivalent to an increase in the reimbursement rate of between 1 and 2 percentage points.

Of particular note in the executive budget appropriations for this program is a proposed restructuring of the Commission two key county reimbursement GRF line items (019-501 and 019-503). The Commission has requested that the funding for GRF line item 019-503, County Reimbursement-Capital Cases, be eliminated and any funding for this line item be moved to 019-501, County Reimbursement. The distinguishing characteristic between the two line items is whether type of case for which reimbursement is being provided involves a capital case or a noncapital case. As a result of this line item structure, the Commission frequently has to seek approval from the Ohio Controlling Board to move funds between the line items in order to maintain an equal rate of reimbursement for both kinds of cases.

Temporary Law Provisions

Indigent Defense Office (Section 209.48). A temporary law provision contained in the executive budget 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 (Section 209.48). A temporary law provision contained in the executive budget 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).

Program 2: Pro Bono Training Program

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.

Group	Fund	ALI	Title	FY 2006	FY 2007
GRF	GRF	019-405	Training Account	$31,324	$31,324
	Total Program Funding:		**Pro Bono Training Program**	**$31,324**	**$31,324**

Funding Source: GRF

Line Items: See above table

Implication of Executive Recommendation: The recommended FY 2006 and FY 2007 appropriations are identical to the estimated FY 2005 expenditure of $31,324 for this program. All things being equal, this would allow the same number of attorneys to be trained, depending, of course, on whether the fees charged by the providers will change over the course of the next two years. There is no staff associated with this program.

Temporary Law Provision

Training Account (Section 209.48). A temporary law provision contained in the executive budget 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 nonprofit training companies to provide continuing legal education (CLE) certified seminars to attorneys who practice criminal indigent defense law.

Program Series 3 Ohio Legal Assistance Foundation

Purpose: To administer and fund the state's civil legal services program

The following table shows the single line item that is used to fund the Ohio Legal Assistance Foundation program series, as well as the Governor's recommended funding levels.

Fund	ALI	Title	FY 2005	FY 2006
State Special Revenue Fund				
574	019-606	Legal Services Corporation	$16,569,282	$21,294,190
		State Special Revenue Fund Subtotal	**$**16,569,282	**$**21,294,190
Total Program Series Funding:		**Ohio Legal Assistance Foundation**	**$**16,569,282	**$**21,294,190

The Ohio Legal Assistance Foundation program series only contains one program as noted below. A relative discussion of that program then follows.

- ***Program 1: Ohio Legal Assistance Foundation***

Program 1: Ohio Legal Assistance Foundation

Program Description: The Ohio Legal Assistance Foundation (OLAF) is a nonprofit entity, created by statute, and charged with administering state funds for Ohio's legal aid societies. The Foundation, 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 from four dedicated funding sources are deposited in Fund 574 and are then passed through the Commission to the Foundation. The Foundation then administers payments to nonprofit 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.

Group	Fund	ALI	Title	FY 2006	FY 2007
SSR	574	019-606	Legal Services Corporation	$16,569,282	$21,294,190
Total Program Funding:			**Ohio Legal Assistance Foundation**	**$16,569,282**	**$21,294,190**

Funding Source: (1) 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, (2) interest-bearing trust accounts established and maintained by title insurance agents or title insurance companies pursuant to section 3953.231 of the Revised Code, (3) additional filing fees collected by municipal, county, and common pleas courts on each new civil action or proceeding pursuant to sections 1901.26, 1907.24, and 2303.201 of the Revised Code, and (4) gifts, bequests, donations, contributions, and income from investments

Line Items: See above table

Implication of Executive Recommendation: The executive budget fully funded the Ohio Public Defender Commission's requested annual appropriation levels for the Ohio Legal Assistance Foundation program series. This essentially means that around $15.8 million in FY 2006 and $20.3 million in

FY 2007 will be allocated for distribution to the state's legal aid societies. The remaining portion of each fiscal year's appropriation for line item 019-606, Legal Services Corporation, will be allocated to cover administrative costs as follows:

- Pursuant to permanent law, 4.5% ($745,618 in FY 2006 and $958,239 in FY 2007) will be reserved for the Foundation's actual, reasonable costs in administering the program; and
- $5,718 in FY 2006 and $5,810 in FY 2007 will be charged as administrative costs borne by the Commission for salaries and telephone expenses associated with managing Foundation activities.

Permanent Law Provisions

Filing Fees (R.C. 1901.26, 1907.24, and 2303.201)

The executive budget modifies current law to increase the surcharge on civil actions not in a small claims division (from $15 to $25) and on civil actions in a small claims division (from $7 to $10) that are used for the charitable purpose of providing financial assistance to legal aid societies. The proposed fee increase includes decedent estate filings and marriage license applications. It is anticipated that these filing fee increases will potentially generate up to $8 million in additional revenue in each of FYs 2006 and 2007 for deposit to the credit of Fund 574, Legal Aid Fund.

The executive budget takes this additional non-GRF revenue into account as reflected by the fact that the recommendation for FY 2006 is $2.3 million, or 15.9%, more than the amount requested by the Commission, and the recommendation for FY 2007 is $7 million, or 48.9%, more than the amount requested by the Commission. It is important to note that the large increases in appropriation authority in this program are not available to the Commission to cover daily operating expenses. The Commission passes through the increased appropriation authority and any additional revenue generated by the fee changes directly to the Ohio Legal Assistance Foundation for disbursements to legal aid societies.

Ohio Legal Assistance Foundation (R.C. 120.53)

The executive budget modifies current law to clarify the Ohio Legal Assistance Foundation's ability to utilize its 4.5% administrative set-aside for administering all filing fee surcharges and the interest-bearing trust account (IOTA) program, in addition to already recognized interest on trust accounts (IOLTA) accounts.

Legal Aid Fund (R.C. 120.52)

The executive budget modifies current law to require that, after certain deductions, 15% of the moneys remaining in the Legal Aid Fund (Fund 574) be placed in the Legal Assistance Foundation Fund, created pursuant to section 120.521 of the Revised Code.

The Legal Assistance Foundation Fund is under the custody and control of the Ohio Legal Assistance Foundation, and contains all gifts, bequests, donations, and contributions accepted by the Ohio Legal Assistance Foundation under section 120.521 of the Revised Code. The Foundation is required to distribute or use all moneys in the Legal Assistance Foundation Fund for the charitable public purpose of providing financial assistance to legal aid societies that provide civil legal services to indigents, enhancing or improving the delivery of civil legal services to indigents, and operating the Foundation.

Program Series 4 — Program Management

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

The following table shows the line items that are used to fund the Program Management program series, as well as the Governor's recommended funding levels.

Fund	ALI	Title	FY 2005	FY 2006
General Revenue Fund				
GRF	019-321	Public Defender Administration	$1,295,120	$1,261,989
GRF	019-401	State Legal Defense Services	$174,886	$177,753
		General Revenue Fund Subtotal	**$1,470,006**	**$1,439,742**
State Special Revenue Fund				
574	019-606	Legal Services Corporation	$5,718	$5,810
		State Special Revenue Fund Subtotal	**$5,718**	**$5,810**
General Services Fund				
406	019-603	Training and Publications	$16,000	$16,000
408	019-605	Client Payments	$522,638	$453,999
		General Services Fund Subtotal	**$538,638**	**$469,999**
Total Program Series Funding: Program Management			**$2,014,362**	**$1,915,551**

The Program Management program series only contains one program as noted below. A relatively discussion of that program then follows.

- ***Program 1: Program Management***

<u>Program Management</u>

Program Description: This program encompasses the Commission's Administrative Division, which consists of the following six sections: Human Resources, Information Systems, Fiscal, Office Services, County Reimbursement, and the Legal Resource Center. Much of the Division provides the necessary services common to most state agencies, including fiscal and accounting, personnel and training, computer information systems, purchasing, fleet management, and delivery. In addition, the Administrative Division also provides services specifically mandated by Chapter 120. of the Revised Code, including: collecting reimbursement from the counties for legal services provided by the Ohio Public Defender, processing reimbursement to the counties for indigent defense programs, producing educational seminars and conferences, and maintaining the office's library.

Group	Fund	ALI	Title	FY 2006	FY 2007
GRF	GRF	019-321	Public Defender Administration	$1,295,120	$1,261,989
GRF	GRF	019-401	State Legal Defense Services	$174,886	$177,753
GSF	406	019-603	Training and Publications	$16,000	$16,000
GSF	408	019-605	Client Payments	$522,638	$453,999
SSR	574	019-606	Legal Services Corporation	$5,718	$5,810
Total Program Funding: Program Management				**$2,014,362**	**$1,915,551**

Funding Source: (1) GRF, (2) fees received by the Commission for conducting educational seminars, and from the sale of publications on topics concerning criminal law and procedure (3) 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, and (4) an amount the Commission is permitted to assess the Legal Aid Fund for the reasonable costs of administering the state's legal aid society law

Line Items: See above table

Implication of Executive Recommendation: The executive budget provided program-funding levels that are $216,494, or 12%, more than the amount requested by the Commission for FY 2006, and $357,323, or 23%, more than the amount requested by the Commission for FY 2007. The additional executive recommended funding stems from the estimated revenues to be generated from the proposed $25 indigent defense application fee. The recommended funding will largely be devoted toward maintaining current FY 2005 levels of service into the next biennium.

The Commission expects to gain more than $400,000 annually from this fee for the purpose of supporting its operations. The application fee revenues will be deposited to the credit of the Commission's non-GRF Fund 408, Client Payment Fund, which is part of this program's funding stream. Accordingly, the Executive, in anticipation of this revenue, increased the recommended appropriation authority in line item 019-605, Client Payments, for both FYs 2006 and 2007. The practical effect of this appropriation increase is to replace GRF funding cuts made elsewhere in the Commission 's budget. The revenue from the application fee will be used to: (1) support staff that process reimbursement claims, (2) fund prison intake activities, and (3) implement an information technology plan initiative to develop a web-based application for reimbursing counties for their indigent defense costs.

An outreach section within the Commission's Administrative Division provides a free consulting service to counties that can include conducting an in-depth evaluation of their local indigent defense system. The section also monitors compliance with state rules and regulations governing the operation of county indigent defense systems. In FYs 2006 and 2007, the Commission plans to shift this program's resources internally to allow greater ability to provide technical assistance and monitor the counties for compliance with the rules and regulations governing indigent defense reimbursement. The Commission has not had the proper staff or resources to adequately monitor the activities of the indigent defense systems in all 88 counties, and therefore perceives the need to increase focus on these activities.

General Revenue Fund

GRF 019-321 Public Defender Administration

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$1,647,604	$1,470,944	$1,431,860	$1,270,404	**$1,295,570**	**$1,262,439**
	-10.7%	-2.7%	-11.3%	**2.0%**	**-2.6%**

Source: GRF

Legal Basis: Section 84 of Am. Sub. H.B. 95 of the 125th 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: The 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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$6,389,591	$6,042,344	$5,877,539	$5,661,958	**$5,744,601**	**$5,704,117**
	-5.4%	-2.7%	-3.7%	**1.5%**	**-0.7%**

Source: GRF

Legal Basis: Section 84 of Am. Sub. H.B. 95 of the 125th 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: The 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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$1,071,734	$924,261	$838,490	$875,040	**$823,620**	**$823,620**
	-13.8%	-9.3%	4.4%	**-5.9%**	**0.0%**

Source: GRF

Legal Basis: Section 84 of Am. Sub. H.B. 95 of the 125th 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: The line item 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% of a county's indigent defense costs.

GRF 019-404 Trumbull County - State Share

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$352,951	$309,523	$287,224	$289,943	**$256,380**	**$256,380**
	-12.3%	-7.2%	0.9%	**-11.6%**	**0.0%**

Source: GRF

Legal Basis: Section 84 of Am. Sub. H.B. 95 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: The line item 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% of a county's indigent defense costs.

The name of the line item 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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$37,075	$34,250	$30,000	$31,324	**$31,324**	**$31,324**
	-7.6%	-12.4%	4.4%	**0.0%**	**0.0%**

Source: GRF

Legal Basis: Section 84 of Am. Sub. H.B. 95 of the 125th 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: The line item 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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$31,320,936	$27,961,935	$29,055,527	$30,553,706	**$30,000,000**	**$30,000,000**
	-10.7%	3.9%	5.2%	**-1.8%**	**0.0%**

Source: GRF

Legal Basis: Section 84 of Am. Sub. H.B. 95 of the 125th 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: The line item is used to reimburse counties for up to 50% of their costs of operating county public defender offices, joint county public defender offices, and appointed counsel systems. If funding in this line item is insufficient to reimburse 50% 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.

Currently, county expenditures incurred for capital cases are reimbursed through the Commission's GRF line item 019-503, County Reimbursements - Capital Cases. The Executive budget proposes to eliminate the Capital Cases line item and merge its funding and purpose into this line item (019-501).

GRF 019-503 County Reimbursement - Capital Cases

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$866,520	$809,901	$785,624	$726,000	**$0**	**$0**
	-6.5%	-3.0%	-7.6%	**-100.0%**	**N/A**

Source: GRF

Legal Basis: Section 84 of Am. Sub. H.B. 95 of the 125th 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 line item is used to reimburse counties for up to 50% of their costs of defending persons accused of capital crimes. If funding in this line item is insufficient to reimburse 50% of the costs for capital cases, then the reimbursement percentage is reduced equally for all counties.

The Executive budget proposes to eliminate this Capital Cases line item and merge its funding and purpose into GRF line item 019-501, County Reimbursement.

GRF 019-504 Reimbursement: Mandate Assistance

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$0	$0	$0	$540,407	**$0**	**$0**
	N/A	N/A	N/A	**-100.0%**	**N/A**

Source: Transfer from Controlling Board's GRF line item 911-404, Mandate Assistance

Legal Basis: Originally established by Controlling Board on July 12, 2004, pursuant to Section 31 of Am. Sub. H.B. 95 of the 125th G.A., authorizing the transfer of any moneys within GRF line item 911-404, Mandate Assistance, not fully utilized to the Ohio Public Defender Commission for the costs incurred by counties in providing indigent defense

Purpose: The line item is used to disburse funding to county commissioners in order that they may provide additional reimbursement for the cost incurred by counties in providing defense to indigent defendants pursuant to Chapter 120. of the Revised Code. The amount disbursed to each county is allocated proportionately on the basis of the total amount of reimbursement paid to all of the counties during the most recent fiscal year for which data is available and as calculated by the Ohio Public Defender Commission.

General Services Fund Group

101 019-602 Inmate Legal Assistance

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$55,895	$27,706	$22,406	$52,054	**$53,086**	**$32,338**
	-50.4%	-19.1%	132.3%	**2.0%**	**-39.1%**

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 84 of Am. Sub. H.B. 95 of the 125th G.A. (originally established by Controlling Board in 1978)

Purpose: The line item 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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$49,231	$0	$0	$0	**$0**	**$0**
	-100.0%	N/A	N/A	**N/A**	**N/A**

Source: GSF: Funding provided by the Ohio Department of Youth Services (DYS)

Legal Basis: Discontinued line item (originally established by Controlling Board on August 16, 1993)

Purpose: The line item captured the funding from an interdepartmental agreement under which 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. In the FY 2004-2005 biennium, DYS has utilized a personal services contract with Larry Matthews, Esquire, to provide legal services to juveniles housed in the Department's institutions.

The main operating appropriations act of the 125th G.A., Am. Sub. H.B. 95, contains a temporary law provision earmarking at least $250,000 of the amounts appropriated to the Commission's GRF line item 019-401, State Legal Defense Services, in each of FYs 2004 and 2005 to "be used to provide legal services and assistance to juveniles." In FYs 2006 and 2007, legal services for juveniles will continue to be funded exclusively through GRF line item 019-401, State Legal Defense Services.

406 019-603 Training and Publications

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$0	$0	$0	$16,000	**$16,000**	**$16,000**
	N/A	N/A	N/A	**0.0%**	**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 84 of Am. Sub. H.B. 95 of the 125th 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 moneys deposited to the credit of the fund 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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$202,594	$184,716	$140,415	$186,040	**$186,146**	**$188,810**
	-8.8%	-24.0%	32.5%	**0.1%**	**1.4%**

Source: GSF: Payments received from counties for 50% 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 84 of Am. Sub. H.B. 95 of the 125th 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: Moneys deposited to the credit of the fund 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% 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).

The Executive budget contains a permanent law provision modifying how much a county is required to pay the State Public Defender for legal representation. The bill requires the State Public Defender to send the county in which the case is filed a bill detailing the actual cost of the legal representation that separately itemizes legal fees and expenses. The county, then, is responsible for paying the State Public Defender (1) for the amount identified as legal fees in the itemized bill, 100% less the state reimbursement rate, as calculated by the State Public Defender for the month the case terminated, and (2) 100% of the amount identified as expenses in the itemized bill. The practical effect of this proposed change in permanent law would require the counties to pay the same percentage share whether a state public defender is appointed to a case or one of the other local mechanisms for providing indigent defense services is utilized. If enacted, this provision would generate approximately $60,000 in additional revenues to the state in each of FYs 2006 and 2007.

408 019-605 Client Payments

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$316,612	$589,370	$257,383	$285,533	**$614,027**	**$762,106**
	86.1%	-56.3%	10.9%	**115.0%**	**24.1%**

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 84 of Am. Sub. H.B. 95 of the 125th 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 the 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 ORC 120.18, 120.28, and 120.33, and (3) provide assistance to counties in the operation of county indigent defense systems.

The Executive budget amends permanent to provide that, if a person who is a defendant in a criminal case requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court in which the criminal case is filed must assess, unless the application fee is waived or reduced, a non-refundable application fee of $25. The bill requires the clerk of courts to deposit all application fees with the county treasurer. The county must retain 80% of the application fees to offset the costs of providing legal representation to indigent persons. Each month, the county auditor must remit 20% of the application fees to the State Public Defender, who must deposit the remitted fees into the state treasury to the credit of the Client Payment Fund (Fund 408).

In FYs 2006 and 2007, an estimated $448,000 and $477,000, respectively, is expected to be forwarded in application fee revenue and deposited to the credit of Fund 408. The revenue from the application fee will be used to fund: (1) support staff that process reimbursement claims, (2) prison legal services activities, and (3) an information technology plan initiative to develop a web-based application for reimbursing counties for their indigent defense costs.

Federal Special Revenue Fund Group

3S8 019-608 Federal Representation

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$681,617	$422,392	$189,639	$355,950	**$380,484**	**$315,287**
	-38.0%	-55.1%	87.7%	**6.9%**	**-17.1%**

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 84 of Am. Sub. H.B. 95 of the 125th G.A. (originally established by Controlling Board on March 2, 1998)

Purpose: Moneys credited to the 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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$31,667	$0	$0	$0	**$0**	**$0**
	-100.0%	N/A	N/A	**N/A**	**N/A**

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

Legal Basis: Discontinued line item (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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$50,623	$17,117	$0	$0	**$0**	**$0**
	-66.2%	-100.0%	N/A	**N/A**	**N/A**

Source: FED: CFDA 16.549, State Challenge Activities

Legal Basis: Discontinued line item (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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$1,455,745	$1,651,822	$1,719,998	$1,991,506	**$2,028,309**	**$2,104,367**
	13.5%	4.1%	15.8%	**1.8%**	**3.7%**

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 84 of Am. Sub. H.B. 95 of the 125th G.A.; statutory authority for contractual relationship resides in ORC 120.04(C)(7) (originally established by Controlling Board on December 17, 1990)

Purpose: Moneys deposited to the credit of this fund partially support the Commission's Multi-County Branch Office which began operation on January 1, 1991. The 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 the 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% of a county's indigent defense costs.

4X7 019-610 Trumbull County - County Share

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$501,157	$549,787	$587,041	$628,454	**$642,106**	**$665,860**
	9.7%	6.8%	7.1%	**2.2%**	**3.7%**

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

Legal Basis: Section 84 of Am. Sub. H.B. 95 of the 125th 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: Moneys deposited to the credit of the fund serve as 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

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$14,815,127	$13,539,334	$14,928,584	$15,440,000	**$16,575,000**	**$21,300,000**
	-8.6%	10.3%	3.4%	**7.4%**	**28.5%**

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, (4) gifts, bequests, donations, contributions, and income from investments, and (5) Executive budget proposes to increase the surcharge on civil actions not in a small claims division (from $15 to $25) and on civil actions in a small claims division (from $7 to $10) that are used for the charitable purpose of providing financial assistance to legal aid societies

Legal Basis: Section 84 of Am. Sub. H.B. 95 of the 125th G.A.; ORC 120.52

Purpose: Moneys deposited to the credit of 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 percent of the money in the fund was reserved for the Foundation's actual, reasonable costs of program administration.

Am. Sub. S.B. 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.

Am. Sub. H.B. 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.

Am. Sub. H.B. 94 of the 124th G.A., 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.

The Executive budget contains three permanent law provisions related to legal aid societies as follows:(1) increases the surcharge on civil actions not in a small claims division (from $15 to $25) and on civil actions in a small claims division (from $7 to $10) that are used for the charitable purpose of providing financial assistance to legal aid societies, (2) establishes a 15% set-aside from moneys in Fund 574 for the Legal Assistance Foundation Fund, and (3) clarifies the Ohio Legal Assistance Foundation's ability to utilize its 4.5% administrative set-aside for administering all filing fee surcharges and the IOTA program, in addition to already recognized IOLTA accounts. If these fee increases are enacted, revenues available to OLAF are estimated to potentially increase by up to $8 million in each of FYs 2006 and 2007.

LSC Budget Spreadsheet by Line Item, FY 2006 - FY 2007

Fund	ALI	ALI Title	Estimated 2005	As Introduced 2006	House Passed 2006	% Change Est. 2005 to House 2006	As Introduced 2007	House Passed 2007	% Change House 2006 to House 2007
PUB		**Public Defender Commission, Ohio**							
GRF	019-321	Public Defender Administration	$1,270,404	$ 1,295,570	$ 1,295,570	2.0%	$ 1,262,439	$ 1,262,439	-2.6%
GRF	019-401	State Legal Defense Services	$5,661,958	$ 5,744,601	$ 5,744,601	1.5%	$ 5,704,117	$ 5,704,117	-0.7%
GRF	019-403	Multi-County: State Share	$875,040	$ 823,620	$ 823,620	-5.9%	$ 823,620	$ 823,620	0.0%
GRF	019-404	Trumbull County - State Share	$289,943	$ 256,380	$ 256,380	-11.6%	$ 256,380	$ 256,380	0.0%
GRF	019-405	Training Account	$31,324	$ 31,324	$ 31,324	0.0%	$ 31,324	$ 31,324	0.0%
GRF	019-501	County Reimbursement	$30,553,706	$ 30,000,000	$ 30,000,000	-1.8%	$ 30,000,000	$ 30,000,000	0.0%
GRF	019-503	County Reimbursement - Capital Cases	$726,000	$ 0	$ 0	-100.0%	$ 0	$ 0	N/A
GRF	019-504	Reimbursement: Mandate Assistance	$540,407	$ 0	$ 0	-100.0%	$ 0	$ 0	N/A
General Revenue Fund Total			**$ 39,948,782**	**$ 38,151,495**	**$ 38,151,495**	**-4.5%**	**$ 38,077,880**	**$ 38,077,880**	**-0.2%**
101	019-602	Inmate Legal Assistance	$52,054	$ 53,086	$ 53,086	2.0%	$ 32,338	$ 32,338	-39.1%
406	019-603	Training and Publications	$16,000	$ 16,000	$ 16,000	0.0%	$ 16,000	$ 16,000	0.0%
407	019-604	County Representation	$186,040	$ 186,146	$ 186,146	0.1%	$ 188,810	$ 188,810	1.4%
408	019-605	Client Payments	$285,533	$ 614,027	$ 614,027	115.0%	$ 762,106	$ 762,106	24.1%
General Services Fund Group Total			**$ 539,627**	**$ 869,259**	**$ 869,259**	**61.1%**	**$ 999,254**	**$ 999,254**	**15.0%**
3S8	019-608	Federal Representation	$355,950	$ 380,484	$ 380,484	6.9%	$ 315,287	$ 315,287	-17.1%
Federal Special Revenue Fund Group Total			**$ 355,950**	**$ 380,484**	**$ 380,484**	**6.9%**	**$ 315,287**	**$ 315,287**	**-17.1%**
4C7	019-601	Multi-County: County Share	$1,991,506	$ 2,028,309	$ 2,028,309	1.8%	$ 2,104,367	$ 2,104,367	3.7%
4X7	019-610	Trumbull County - County Share	$628,454	$ 642,106	$ 642,106	2.2%	$ 665,860	$ 665,860	3.7%
574	019-606	Legal Services Corporation	$15,440,000	$ 16,575,000	$ 16,575,000	7.4%	$ 21,300,000	$ 21,300,000	28.5%
State Special Revenue Fund Group Total			**$ 18,059,960**	**$ 19,245,415**	**$ 19,245,415**	**6.6%**	**$ 24,070,227**	**$ 24,070,227**	**25.1%**
Total All Budget Fund Groups			***$ 58,904,319***	***$ 58,646,653***	***$ 58,646,653***	***-0.4%***	***$ 63,462,648***	***$ 63,462,648***	***8.2%***

As Introduced (Executive)	As Passed by the House
(CD-816-PUB) County Representation Billing Rate	
R.C. *120.06, 120.13, 120.23*	R.C. *120.06, 120.13, 120.23*
(1) Requires a county, when the State Public Defender provides legal representation for an indigent person, to pay the state public defender legal fees in an amount equal to 100% of the legal fees less the current state reimbursement rate instead of the required payment of 50% of the actual cost of representation as stipulated in current law; and	(1) Same as the Executive.
(2) Requires a county to pay the State Public Defender 100% of expenses and costs of investigation and mitigation services and then seek reimbursement of those amounts from the State Public Defender as provided under existing law.	(2) Same as the Executive.
Fiscal effect: This provision will require counties to pay the same percentage share whether they appoint a state public defender to a case or utilize one of the other local mechanisms for providing indigent defense services. If enacted, this provision would generate approximately $60,000 in additional revenues to the state in each of FYs 2006 and 2007. In addition, the Commission would be allowed to bill counties for 100% of the cost for mitigation, investigation, experts, and expenses, and then allow the counties to seek reimbursement back from the state at the current reimbursement rate.	

As Introduced (Executive)	As Passed by the House
(CD-817-PUB) Application Fee for Indigent Defendants	
R.C. *120.36*	R.C. *120.36*
(1) Requires that, if a person who is a defendant in a criminal case requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court in which the criminal case is filed must assess, unless the application fee is waived or reduced, a nonrefundable application fee of $25;	(1) Same as the Executive, but removes the provision that permits the court to consider a person's willful failure to pay the application fee as an enhancement factor when imposing sentencing, clarifies that the provision applies to all trial courts, and includes definitions for the terms "clerk of court" and "county-operated municipal court."
(2) Requires the clerk of courts to deposit all application fees with the county treasurer;	(2) Same as the Executive.
(3) Requires the county to retain 80% of the application fees to offset the costs of providing legal representation to indigent persons, and requires the county auditor each month to remit the remaining 20% to the State Public Defender for deposit to the credit of the Client Payment Fund (Fund 408); and	(3) Same as the Executive.
(4) Requires the clerk of courts of each county to annually report certain information to the State Public Defender and the State Auditor.	(4) Same as the Executive.
Fiscal effect: This application fee will potentially generate a total of around $2.2 million in additional revenue in each of FYs 2006 and 2007. Assuming that were true, then counties statewide would collect $1.76 million in each year and the remainder, or $440,000, would be remitted to the state.	Fiscal effect: Same as the Executive.

As Introduced (Executive)	As Passed by the House
(CD-825-PUB) Legal Aid Fund	
R.C. *120.52*	R.C. *120.52*
Clarifies the Ohio Legal Assistance Foundation's ability to utilize its 4.5% administrative set aside for administering all filing fee surcharges and the IOTA program, in addition to already recognized IOLTA accounts. Fiscal effect: As this is a clarifying provision, there would appear to be no discernible fiscal effect.	Same as the Executive.
(CD-826-PUB) Ohio Legal Assistance Foundation	
R.C. *120.53*	R.C. *120.53*
Establishes a 15% set-aside from moneys in the Legal Aid Fund (Fund 574) for the Legal Assistance Foundation Fund. Fiscal effect: The fiscal effect of this provision on Fund 574 is uncertain.	Same as the Executive.

As Introduced (Executive)	As Passed by the House
(CD-818-PUB) Ohio Legal Aid Filing Fee Surcharge	
R.C. *1901.26, 1907.24, 2303.201*	R.C. *1901.26, 1907.24, 2303.201*
Increases the surcharge on civil actions not in a small claims division (from $15 to $25) and on civil actions in a small claims division (from $7 to $10), including that are used for the charitable purpose of providing financial assistance to legal aid societies. Fiscal effect: It is anticipated that these filing fee increases will potentially generate up to $8 million in additional revenue in each of FYs 2006 and 2007 for deposit to the credit of Fund 745, Legal Aid Fund. The Commission passes through the additional revenue generated by the fee changes directly to the Ohio Legal Assistance Foundation for disbursements to legal aid societies.	Same as the Executive.
(CD-1008-PUB) Removal of the Right to Counsel for Indigents in Certain Civil Juvenile Proceedings	
	R.C. *2151.352*
No provision.	Removes, for certain civil matters only, an indigent person's statutory right to appointed counsel when the person is a party to a proceeding in juvenile court. Fiscal effect: As a result of the provision's restriction on the use of appointed counsel in certain juvenile court matters, theoretically at least, (1) counties may realize a decrease in the amount of money spent annually on legal assistance, and (2) the state may realize a decrease in the amount of money that it reimburses counties annually for the provision of indigent defense legal services.

As Introduced (Executive)	As Passed by the House
(CD-819-PUB) Indigent Defense Office	
Section: *209.48*	Section: *209.48*
Requires moneys appropriated to GRF appropriation item 019-404, Trumbull County - State Share, and non-GRF appropriation item 019-610, Trumbull County - County Share, be used to support an indigent defense office for Trumbull County. Fiscal effect: This provision reflects on ongoing program wherein the Commission 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 appropriation items. Trumbull County's contribution to the indigent defense office is deposited in the state treasury to the credit of Fund 4X7 (appropriation item 019-610, Trumbull County - County Share).	Same as the Executive.

As Introduced (Executive)	As Passed by the House
(CD-820-PUB) Multi-County Office	
Section: *209.48*	Section: *209.48*
Requires moneys appropriated to GRF appropriation item 019-403, Multi-County: State Share, and non-GRF appropriation item 019-601, Multi-County: County Share, (Fund 4C7) be used to support the Commission's Multi-County Branch Office Program. Fiscal effect: This provision reflects on ongoing program wherein 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 appropriation items. The local contribution provided by each of the ten participating counties is deposited in the state treasury to the credit of Fund 4C7 (appropriation item 019-601, Multi-County: County Share).	Same as the Executive.

As Introduced (Executive)	As Passed by the House
(CD-821-PUB) Training Account	
Section: *209.48*	Section: *209.48*
Requires moneys appropriated to GRF appropriation item 019-405, Training Account, be used 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 Ohio Public Defender to provide indigent defense services. Fiscal effect: This GRF appropriation 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.	Same as the Executive.
(CD-822-PUB) Federal Representation	
Section: *209.48*	Section: *209.48*
Requires federal appropriation item 019-608, Federal Representation, serve as the depository for reimbursement payments received by the Ohio Public Defender from the federal courts for providing legal representation in federal court cases at the request of the federal courts. Fiscal effect: This provision continues existing practice with regard to the handling of federal court reimbursement payments.	Same as the Executive.