

- Reimbursement rate registers in low 40s
- Tight budget presents payroll problem
- Filing fee sunset repealed

Ohio Public Defender Commission

Joseph W. Rogers, Budget Analyst

ROLE

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 post conviction proceedings.

The Ohio Public Defender Commission, which was created effective January 13, 1976, pursuant to Am. Sub. H.B. 164 of the 111th General Assembly, provides, supervises, and coordinates legal representation for persons who cannot afford to hire an attorney to represent them in criminal court. The commission's largest activity in that regard is the administration of a subsidy program that partially reimburses counties for indigent defense expenditures related to the operation of local public defender offices or the use of appointed counsel. The commission also provides legal services to inmates at the state's correctional facilities, trial level representation in some capital cases, and appellate and post-appeals representation in capital and non-capital cases. Additionally, the commission acts as a conduit to pass funds to the Ohio Legal Assistance Foundation (OLAF) for the purpose of providing financial assistance to legal aid societies throughout the state.

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

In meeting the right to counsel obligations in criminal matters, each county has the option of establishing a county public defender system, a joint county public defender system, adopting a schedule to pay private appointed counsel, contracting with the State Public Defender, or contracting with a non-profit corporation. A county may use one or any combination of these options, and, in point of fact, most opt to utilize county public defender offices or appointed counsel systems.

Agency In Brief					
Number of Employees	Total Appropriations-All Funds		GRF Appropriations		Appropriation Bill(s)
	2002	2003	2002	2003	
172	\$64.0 million	\$65.8 million	\$44.4 million	\$45.4 million	Am. Sub. H.B. 94

OVERVIEW

The statutory responsibilities performed by the commission continue to be financed primarily through the state's GRF, although its percentage of the commission's total annual budget has shrunk in recent years. Whereas GRF spending comprised almost 80 percent of total commission expenditures in FYs 1992 and 1993, it has since dropped into the 70 percent range. Over that time period, around 75 percent of the commission's total GRF budget has been committed to the state's County Reimbursement program. Also of note is that approximately 25 percent 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.

The total amount of GRF funding appropriated to the commission in each of FYs 2002 and 2003 represents what can perhaps at best be termed a no growth budget. In FY 2002, GRF appropriations total \$349,181, or 0.8 percent, less than the commission's total actual FY 2001 GRF expenditures. This is followed in FY 2003 by total GRF appropriations that represent an increase of \$939,204, or 2.1 percent, from the FY 2002 GRF appropriations. In light of the very tight fiscal condition created by this level of funding, the commission will most likely find itself trying to balance two somewhat competing responsibilities: (1) the need to perform its own state financed legal defense services, and (2) the goal of getting the reimbursement rate for county provided indigent defense services close to 50 percent.

BUDGET ISSUES

STATE LEGAL DEFENSE SERVICES

The commission's State Legal Defense Services program provides legal representation to indigent adults, juveniles, and incarcerated individuals in all courts when the United States Constitution requires representation, or when it is requested by the court, the county or joint county public defender, or an inmate. Most legal matters in which the state provides direct representation involve appeals or death penalty cases. Indigent defense for most other cases is provided by local public defenders.

The State Legal Defense Services program is financed primarily by the commission's GRF line item 019-401, State Legal Defense Services. The amounts appropriated for line item 019-401 are less than what the commission calculated the future cost of providing its FY 2001 level of state legal defense services by roughly \$725,000 and \$786,000 in FYs 2002 and 2003, respectively. Roughly 80 percent of the line item's appropriation is allocated for employee salaries and fringe benefits. Presumably, the commission will have to cutback or constrain the amount of spending that it had planned to allocate from this line item for personal services, purchased personal services contracts, maintenance, and equipment. This could be accomplished by delaying purchases, holding vacant staff positions open, shifting necessary expenditures to other line items, or some mix of these fiscal strategies.

COUNTY REIMBURSEMENT

The County Reimbursement program is responsible, under existing law, for providing up to 50 percent reimbursement to counties for the cost of providing attorneys to represent indigent persons who are charged with a crime or are appealing their conviction(s). The program also establishes standards (including indigence), guidelines, and maximum fees for state reimbursement of county level indigent defense services, and monitors county compliance with these 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 these costs by the state. The Revised Code allows counties to use one or more of five different types of legal services delivery systems. These include: (1) setting up a county public defender office, (2) setting up a joint county public defender office, (3) utilization of private appointed counsel, (4) contracting with the State Public Defender, or (5) contracting with a non-profit corporation. Most counties use county public defender office and/or appointed counsel systems.

The level of GRF funding contained in the FY 2002-2003 biennial budget is expected to allow the commission to hit a county reimbursement rate in the range of 40 percent to 42 percent. The commission has calculated that it would need additional GRF funding in the amount of approximately \$7.0 million in FY 2002 and \$9.0 million in FY 2003 to close in on the 50 percent reimbursement rate target.

LEGAL AID SOCIETIES

The Ohio Legal Assistance Foundation (OLAF) is a non-profit entity, created by statute, and charged with administering state funds for Ohio's legal aid societies. The FY 2002-2003 biennial budget contains a permanent law change that allows the collection of a pre-existing additional filing fee in civil cases that is used for legal aid societies to continue after December 31, 2002. Under prior law, that additional filing fee on civil cases was to be reduced to \$4 effective January 1, 2003. If the civil case filing fee were to have been reduced, as would have happened under prior law, then the amount of revenue collected for the purpose of providing financial assistance to legal aid societies would have dropped by approximately \$4.5 million annually. By eliminating the provisions in prior law that would have reduced the additional filing fee amount, the FY 2002-2003 biennial budget preserves the roughly \$4.5 million annual revenue stream. ■■■

FY 2002 - 2003 Final Appropriation Amounts

All Fund Groups

<i>Line Item Detail by Agency</i>			<i>FY 1999:</i>	<i>FY 2000:</i>	<i>FY 2001:</i>	<i>FY 2002 Appropriations:</i>	<i>% Change 2001 to 2002:</i>	<i>FY 2003 Appropriations:</i>	<i>% Change 2002 to 2003:</i>
Report For: Main Operating Appropriations Bill			Version: Enacted						
PUB Public Defender Commission, Ohio									
GRF	019-100	Personal Services	\$ 0	\$ 0		----	N/A	----	N/A
GRF	019-200	Maintenance	\$ 0	\$ 0		----	N/A	----	N/A
GRF	019-300	Equipment	\$ 0	\$ 0		----	N/A	----	N/A
GRF	019-321	Public Defender Administration	\$ 1,593,982	\$ 1,661,190	\$1,706,534	\$ 1,745,787	2.30%	\$ 1,745,787	0.00%
GRF	019-401	State Legal Defense Services	\$ 6,456,852	\$ 7,007,257	\$6,612,220	\$ 6,879,155	4.04%	\$ 7,151,032	3.95%
GRF	019-403	Multi-County: State Share	\$ 935,049	\$ 1,089,431	\$1,168,604	\$ 1,093,600	-6.42%	\$ 1,088,346	-0.48%
GRF	019-404	Trumbull County-State Share	\$ 350,679	\$ 386,362	\$396,577	\$ 359,216	-9.42%	\$ 358,458	-0.21%
GRF	019-405	Training Account	\$ 39,325	\$ 45,575	\$44,200	\$ 47,280	6.97%	\$ 47,280	0.00%
GRF	019-501	County Reimbursement - Non-Capital C	\$ 24,517,431	\$ 31,772,111	\$33,975,744	\$ 33,384,666	-1.74%	\$ 33,994,835	1.83%
GRF	019-503	County Reimbursement - Capital Cases	\$ 904,054	\$ 874,588	\$874,837	\$ 921,830	5.37%	\$ 985,000	6.85%
General Revenue Fund Total			\$ 34,797,372	\$ 42,836,514	\$ 44,778,716	\$ 44,431,535	-0.78%	\$ 45,370,739	2.11%
101	019-602	Inmate Legal Assistance	\$ 52,445	\$ 57,776	\$59,119	\$ 67,172	13.62%	\$ 71,020	5.73%
406	019-603	Training and Publications	\$ 9,077	\$ 1,200		\$ 16,000	N/A	\$ 16,000	0.00%
407	019-604	County Representation	\$ 380,722	\$ 151,806	\$130,061	\$ 213,778	64.37%	\$ 240,556	12.53%
408	019-605	Client Payment	\$ 83,732	\$ 112,634	\$133,620	\$ 260,584	95.02%	\$ 285,533	9.57%
101	019-607	Juvenile Legal Assistance	\$ 355,843	\$ 419,835	\$395,368	\$ 458,767	16.04%	\$ 481,462	4.95%
407	019-610	Trumbull County Office	\$ 0	\$ 0		\$ 0	N/A	\$ 0	N/A
General Services Fund Group Total			\$ 881,819	\$ 743,251	\$ 718,168	\$ 1,016,301	41.51%	\$ 1,094,571	7.70%
3S8	019-608	Federal Representation	\$ 130	\$ 233,176	\$489,584	\$ 564,929	15.39%	\$ 594,247	5.19%
3H4	019-609	Death Penalty Resource Center	\$ 13,514	\$ 37,758		\$ 0	N/A	\$ 0	N/A
3M8	019-611	PD Case Management	\$ 23,661	\$ 0		\$ 0	N/A	\$ 0	N/A
3M9	019-612	Community Reconciliation	\$ 889	\$ 0		\$ 0	N/A	\$ 0	N/A
3U7	019-614	Juvenile JAIBG Grant	----	----	\$68,171	\$ 51,516	-24.43%	\$ 54,601	5.99%
3U8	019-615	Juvenile Challenge Grant	----	----	\$45,422	\$ 118,658	161.23%	\$ 124,984	5.33%
Federal Special Revenue Fund Group Total			\$ 38,194	\$ 270,934	\$ 603,177	\$ 735,103	21.87%	\$ 773,832	5.27%
4C7	019-601	Multi-County: County Share	\$ 1,137,576	\$ 1,214,356	\$1,324,707	\$ 1,603,064	21.01%	\$ 1,714,575	6.96%
574	019-606	Legal Services Corporation	\$ 14,509,545	\$ 14,568,109	\$13,884,221	\$ 15,725,233	13.26%	\$ 16,275,558	3.50%
4X7	019-610	Trumbull County-County Share	\$ 407,822	\$ 429,860	\$449,339	\$ 526,560	17.19%	\$ 564,714	7.25%
State Special Revenue Fund Group Total			\$ 16,054,943	\$ 16,212,325	\$ 15,658,268	\$ 17,854,857	14.03%	\$ 18,554,847	3.92%

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PUB Public Defender Commission, Ohio							
<i>Public Defender Commission, Ohio Total</i>	\$ 51,772,328	\$ 60,063,024	\$ 61,758,329	\$ 64,037,796	3.69%	\$ 65,793,989	2.74%