



# Office of the Ohio Public Defender



Annual Report 2015

# Office of the Ohio Public Defender

## About Us

### Mission

To protect the rights of indigent persons throughout Ohio by providing quality representation and leadership in the criminal and juvenile justice systems.

### Vision

The Office of the Ohio Public Defender will be a nationally recognized leader in indigent defense, that provides superior representation and advocacy, while affirming the dignity of our clients, and operating with fiscal and professional integrity.

### Values

The basis for the existence and work of the Office of the Ohio Public Defender is the landmark 1963 U.S. Supreme Court decision, *Gideon v. Wainwright*. *Gideon* seeks to guarantee a fair trial for every person, regardless of their economic means. Every day, through our work, we strive to ensure that promise is upheld in the State of Ohio. In doing so, we pledge that we will be guided by these values:

#### **Compassion**

We will be mindful of the conditions and experiences that shape those who come to us for help.

#### **Dignity**

We will treat every person with respect.

#### **Equity**

Our work and our office will be free from bias or favoritism.

#### **Integrity**

We will act with sound moral character and a dedication to professional and ethical principles.

#### **Service**

We will dedicate ourselves to protecting the rights of indigent individuals, and in doing so will protect the rights afforded to all citizens by the Constitution.

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# Message from the Chair

*Jefferson Liston, Ohio Public Defender Commission Chair*

Ohio's indigent defense system is in dire need of reform and additional resources. Defense services are provided, controlled, and funded by each of Ohio's 88 counties, resulting in vast differences in the quality and cost of services provided. Ohio's patchwork system of indigent defense is remarkably inefficient, causing increased costs in other parts of the criminal justice system.

*"Gideon isn't a promise,  
it's a constitutional right."*

- Stephen Bright

Like many states, Ohio is taking a critical look at the outsized growth of its criminal justice system during the past three decades. Over the past few years, the General Assembly has enacted House Bill 86 and Senate Bill 337, and created the Criminal Justice Recodification Committee. Ohio's indigent defense system is integral to the success of these attempts to right-size Ohio's criminal justice system.

**A high-quality indigent defense system helps ensure that the right people are in prison, serving the right sentences. And well-trained, adequately supported defense counsel are the most likely obstacle between an innocent Ohioan and a wrongful conviction.**

Fixing Ohio's long-neglected indigent defense system will cost the state more than it currently spends, but savings will be realized in other areas of the criminal justice system: local jail populations and costs will stabilize or decrease, as defense attorneys identify alternative placements or monitoring systems for clients awaiting trial, and as cases are processed more quickly and efficiently; Ohio's prison system will benefit, as more sentences will be legally sound and appropriate, and as more clients are diverted to appropriate community alternatives; and Ohio's courts will realize efficiencies and savings, as defense attorneys are more prepared to proceed with cases, better able to represent their clients, and less likely to commit constitutional errors that result in legal appeals.

If Ohio is to have a criminal justice system that is truly just, one that ensures only the right people are in prison, it is essential to offer public defenders who are well-trained and accountable. Systems that do not offer these protections are why so many American cities are inflamed and so many citizens believe there is no justice in our society. ♦

# Members of the Commission

*Fiscal Year 2015*

**Jefferson Liston, chair**

Attorney  
Tyack, Blackmore & Liston Co., LPA  
Governor appointment  
*6/06/2013–1/12/2016*

**Gabriella Celeste**

Policy Director & Adjunct  
Assistant Professor  
Schubert Center for Child Studies  
Case Western Reserve University  
Governor appointment  
*1/15/2015–1/12/2019*

**David Doughten**

Attorney  
David Doughten Attorney at Law  
Supreme Court appointment  
*1/13/2013–1/12/2017*

**Ben E. Espy**

Attorney  
Ben E. Espy Attorney at Law  
Governor appointment  
*4/24/2013–1/12/2017*

**Edward Rhine**

Lecturer  
Department of Sociology  
Ohio State University  
Governor appointment  
*5/21/2014–1/12/2018*

**Carmen Roberto**

Attorney  
Niekamp, Weisensell,  
Mutersbaugh & Mastrantonio LLP  
Supreme Court appointment  
*1/13/2015–1/12/2019*

**R. Robert Umholtz**

Attorney  
Geauga County Public Defender Office  
Supreme Court appointment  
*1/13/2014–1/12/2018*

**Jennifer Vermillion**

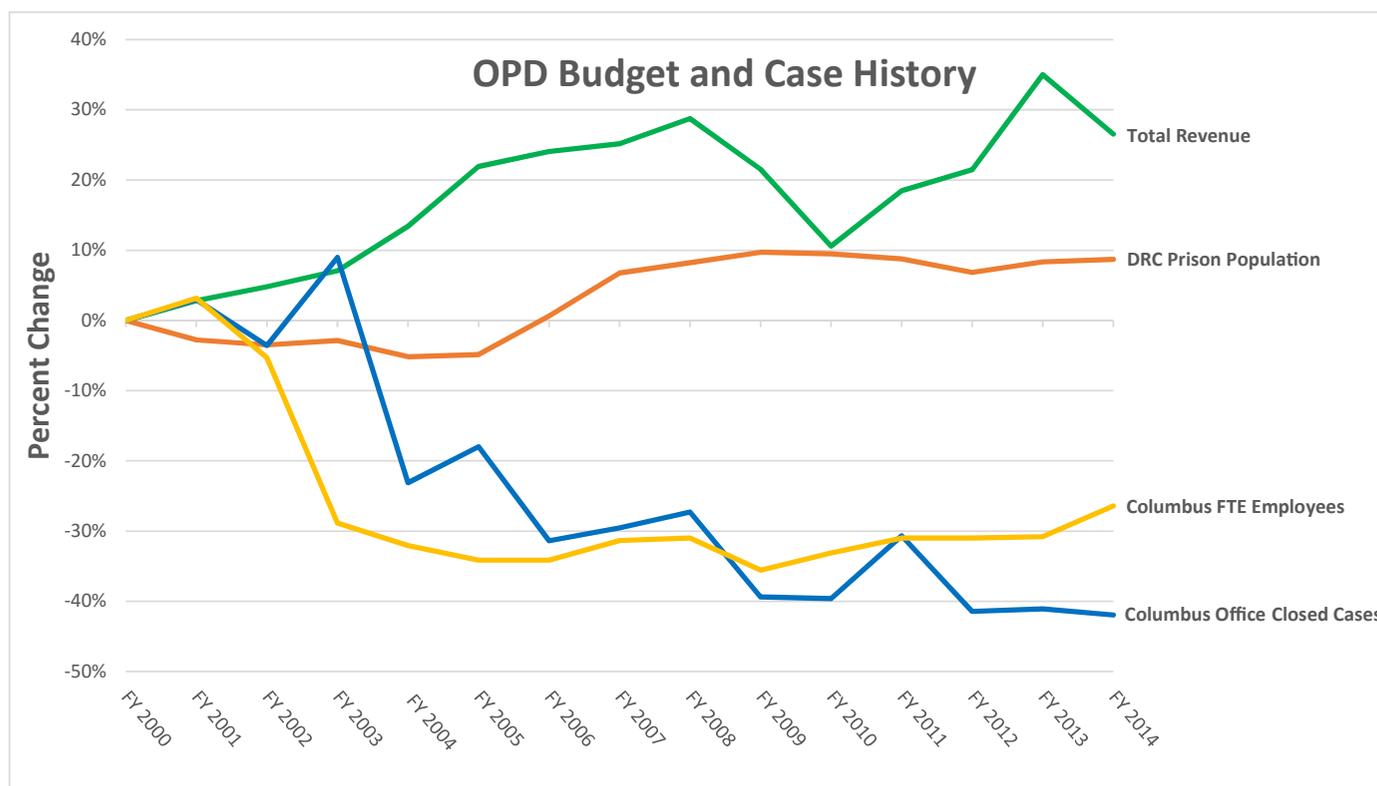
Crawford County Commissioner  
Governor appointment  
*1/30/2014–01/12/2018*

# Message from the Director

*Tim Young, State Public Defender*

The Office of the Ohio Public Defender's operating budget has been cut and flat-funded for several biennia. As fiscal year 2015 comes to a close, the agency's budget is out of long-term structural balance due to inflationary cost increases and stagnant or declining revenues.

The agency faces this chronic underfunding despite a healthy economy, an improved state budget, and an ever-increasing prison population.



From 2000–2015, Ohio's GRF revenue increased by 36%, and the Consumer Price Index for all urban consumers increased 37%. Meanwhile, OPD's operating budget increased only 9%, an average annual growth rate of 0.6%, or about one-quarter the growth rate of the state's revenue or the CPI. In that same time period, DRC's population (our major client base) increased 11.7%, while the number of OPD employees decreased more than 20%.

In the face of extraordinary pressures and dwindling resources, OPD has continued to provide exemplary representation to its clients. For example, during FY15, the agency initiated an effort to identify and correct judicial sanction errors. This effort, combined with our jail-time credit work, has saved our clients—and Ohio taxpayers—time and money.

The agency also took an important step toward fulfilling its statutory duty to supervise the compliance of county systems with the rules and standards established by the Ohio Public Defender Commission, by creating the Policy & Outreach Division. As OPD begins to evaluate and oversee county systems, the agency will gather the information it needs to improve the provision of indigent defense services and ensure state funds are used effectively.

Though available funding remains inadequate, the Commission and OPD have strategically invested in efforts that will contribute to the improvement of Ohio's broken indigent defense system. The goal is to ensure that quality representation is provided to all persons qualified to receive those legal services. The Sixth Amendment of the United States Constitution demands no less. ♦

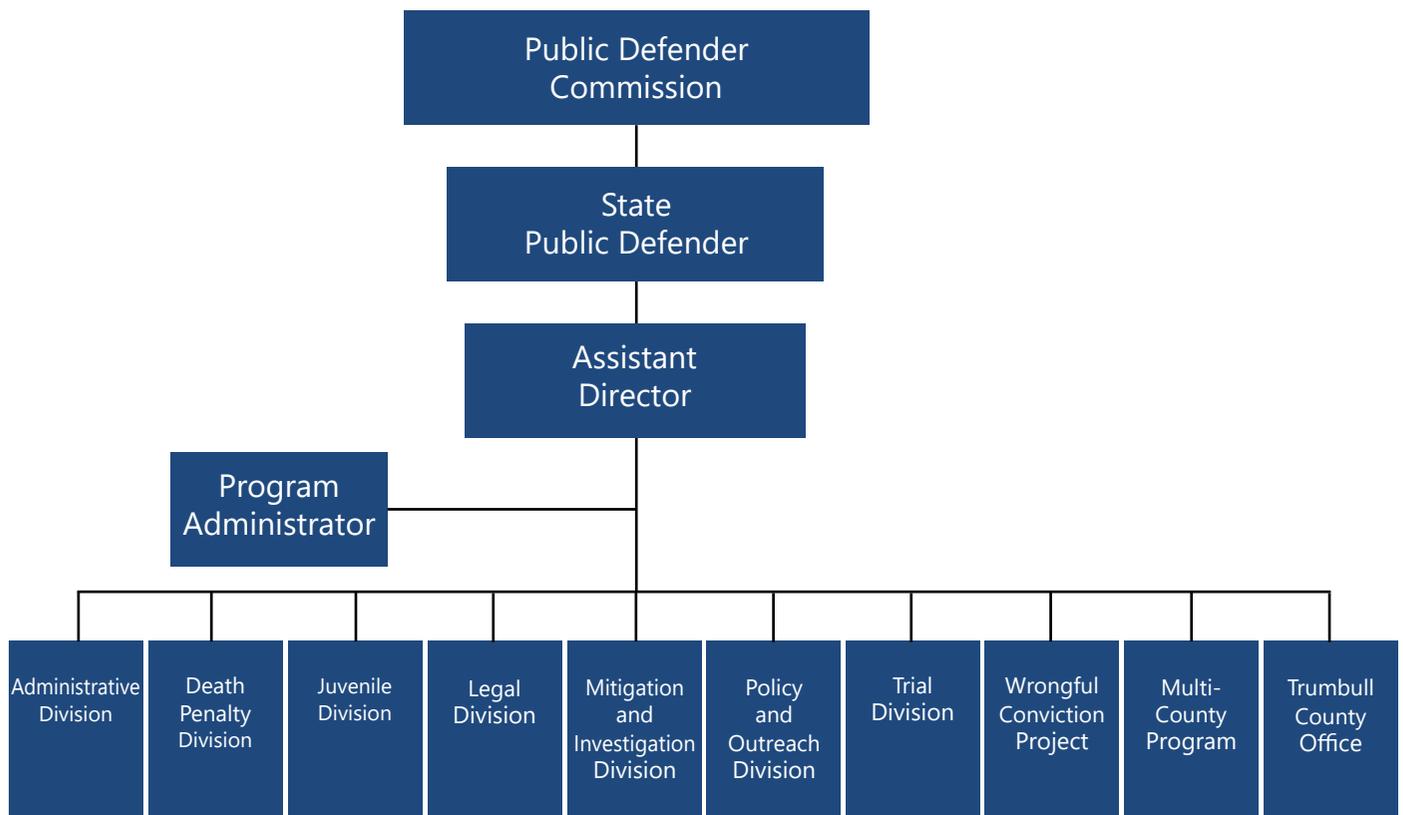
### In fiscal year 2015, OPD:

- saved clients more than 3,147 days of unlawful imprisonment;
- saved clients more than 5,624 days of judicial sanction errors; and
- saved Ohio taxpayers over \$1 million. ♦



# Office of the Ohio Public Defender

*Table of Organization*



# Office of the Ohio Public Defender

## *Management Team*

**Timothy Young**  
**Elizabeth R. Miller**  
**John D. Alge**  
**Sharon M. Allison**  
**Jill Beeler**  
**Joe Bodenhamer**  
**Amy M. Borrer**  
**Herman Carson**  
**Lisa Ostrolenk Caudill**  
**James R. Foley**  
**Douglas Francis**  
**Kristopher A. Haines**  
**Dorian L. Hall**  
**Craig M. Jaquith**  
**Jeremy J. Masters**  
**Kenneth McNeil**  
**Robin Messmer-Taylor**  
**Gregory W. Meyers**  
**Matthew Pentz**  
**Susan Pettit**  
**Amanda J. Powell**  
**Kimberly S. Rigby**  
**Kathryn L. Sandford**  
**Tara Sayre**  
**Teri Slack**  
**M. Kathryn Smith**  
**Raymond Smith**  
**Brenda L. Swingle**  
**Katherine A. Szudy**  
**Dennis Taylor**  
**Rachel Troutman**  
**Terri L. Wilson**

*Ohio Public Defender*  
*Assistant Director*  
*Director of Administration & CFO*  
*Human Resources Administrator/EEO Officer*  
*Chief Counsel – Juvenile Division*  
*Director – Wrongful Conviction Project*  
*Director – Policy & Outreach Division*  
*Director – Multi-County Program*  
*Legal Resource Center Manager*  
*Supervising Attorney – Legal Division*  
*Supervising Attorney – Athens Branch Office*  
*Supervising Attorney – Legal Division*  
*Chief Criminal Investigator and Mitigation Specialist*  
*Chief Counsel – Legal Division*  
*Supervising Attorney – Legal Division*  
*Director – Information Systems*  
*Program Administrator – Legal Division*  
*Chief Counsel – Trial Division*  
*Director – Trumbull Branch Office*  
*Director – Ross Branch Office*  
*Supervising Attorney – Juvenile Division*  
*Supervising Attorney – Death Penalty Division*  
*Supervising Attorney – Death Penalty Division*  
*Program Administrator – Athens Branch Office*  
*Program Administrator – Death Penalty Division*  
*Reimbursement Administrator/Contracts Counsel*  
*Director – Washington Branch Office*  
*Program Administrator – Contracts*  
*Supervising Attorney – Legal Division*  
*Office Services Manager*  
*Supervising Attorney – Death Penalty Division*  
*Program Administrator*

# Office of the Ohio Public Defender

## *Office organization*

The central office of the Ohio Public Defender Commission is in Columbus, Ohio. In addition, branch offices are located in Athens, Ross, Trumbull, and Washington counties. The office also has on-site staff based at several adult and juvenile correctional institutions in Ohio.

## **Administrative Division**

The Administrative Division provides necessary business support services to the agency. The Division is composed of six sections: Fiscal, Office Services, Human Resources, Information Systems, Billing & Contracts, and Legal Resource Center/Library.

Ohio Revised Code §120.04(B)(13) requires the State Public Defender to “provide technical aid and assistance to county public defender offices, joint county public defender offices, and other local counsel providing legal representation to indigent persons....” In addition to the various assistance programs, the Legal Resource Center/Library maintains an expert witness list. Attorneys in need of experts call the central office librarian, who provides them with the necessary information. The central office library also supplies case law to the law librarians in the state correctional institutions.

## **Death Penalty Division**

The Death Penalty Division provides, coordinates, and supervises legal representation for indigent criminal defendants in capital cases. Death Penalty Division attorneys handle all four types of post-trial cases: direct appeal, post-conviction, habeas corpus, and executive clemency requests. In addition, our attorneys frequently advise and assist attorneys defending indigent capital clients at trial, and provide training.

*“The process of carrying out a verdict of death cannot reach the point where it is so degrading and brutalizing to the human spirit as to constitute psychological torture.”*

- OPD Amicus Brief, *State v. Broom*

### *Direct Appeals*

Death Penalty attorneys represent clients on direct appeal before the Supreme Court of Ohio when appointed to appeal a conviction and death sentence imposed by the trial court. The direct appeal process also includes discretionary review by the Supreme Court of the United States.

Direct appeals are limited to a review of matters already contained in the trial record. Attorneys appointed to handle direct appeals from a capital conviction and death sentence must be certified under Rule 3.04 of the Ohio Supreme Court's Rules on the Appointment of Counsel in Capital Cases.

Under ORC §2929.05, it is mandatory that the Supreme Court of Ohio review a capital case on direct appeal. The Court must review the trial court record for error and independently review the evidence to determine whether a death sentence is warranted.

### *Post-Conviction*

Death Penalty attorneys represent capital clients who petition the trial court for relief under

A handwritten note in cursive script on lined paper. The text reads: "The powerful attorneys you placed on my case to handle my Death Row conviction, are the best!!!". The note is written on a white background with horizontal lines and is enclosed in a black rectangular border.

Ohio's post-conviction petition statute. The statute provides a means for a capital client to gain relief from trial errors that cannot be fully litigated on direct appeal. Because post-conviction cases address matters that are not already contained in the trial court record, they require an extensive investigation into matters outside the record.

Death Penalty attorneys must have expertise in presenting off-record challenges to the evidence used to obtain a client's conviction or death sentence (for example, ballistics, blood spatter, DNA, cultural mitigation, mental health, substance abuse, intellectual disability/mental retardation, and mitigation evidence). Post-conviction representation involves both trial-level skills and appellate skills.

### *Federal Habeas Corpus*

Death Penalty attorneys also represent capital clients in federal habeas corpus proceedings. After a client has exhausted his or her direct appeal and state post-conviction remedies, the client may seek review in the United States district court by filing a petition for a writ of habeas corpus. The client may only seek relief on claims that involve a violation of the United States Constitution.

Habeas cases are among one of the most complex forms of litigation. An attorney representing a client in a capital habeas petition must know substantive constitutional law and must be well-versed in a body of law dealing with the procedural technicalities that often arise when a federal court reviews a state prisoner's claim. Habeas practice also combines the skills used in direct appeals and state post-conviction cases. Habeas counsel may be called upon to take depositions, examine witnesses at a hearing, and draft appellate briefs. The United States Court of Appeals for the Sixth Circuit hears all appeals from habeas cases filed in Ohio. The habeas direct appeal process also includes discretionary review by the Supreme Court of the United States.

### *Executive Clemency Requests*

Death Penalty attorneys regularly represent clients in petitions to the governor seeking clemency. Clemency attorneys must continuously investigate and develop claims and prepare witnesses. This extensive effort is often complicated by the pursuit of last-minute relief in state and federal courts. Clemency attorneys continue to represent their clients until clemency is granted or an execution occurs.

Attorneys are often present during the execution to advocate for any last-minute or lethal injection-related issues that may arise. Sometimes, the Death Penalty attorney is the only person who attends the execution to support his or her client.

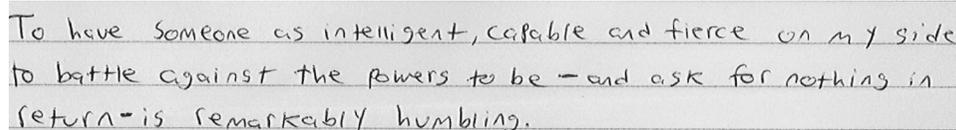
### *Education and Outreach*

The Death Penalty Division supports the overall OPD mission of education and outreach by training attorneys representing indigent clients. Death Penalty attorneys routinely assist capital trial counsel across Ohio, and sometimes across the nation, with capital case legal issues.

The Death Penalty Division is committed to providing high quality legal services for each and every one of our death-row clients, and to the capital defense community, through effective advocacy, cutting-edge legal education, and innovative case assistance.

### **Juvenile Division**

The Juvenile Division provides access to the courts for children who have been committed to the Ohio Department of Youth Services (ODYS). Juvenile Division attorneys provide legal assistance



To have someone as intelligent, capable and fierce on my side to battle against the powers to be - and ask for nothing in return - is remarkably humbling.

and representation that begins with a legal orientation during the intake process. Attorneys may then represent children by gathering

legal information; correcting sentence errors; filing confinement credit and judicial release motions; on appeal and post-conviction matters in state and federal courts; during sex offender registration hearings that may include classification, review, or declassification; new charges; and when a juvenile's case is remanded for new trial proceedings.

Juvenile Division attorneys provide assistance to juveniles in ODYS on conditions of confinement matters, which includes responding to requests for assistance, reviewing fact investigations, determining whether the child's conditions of confinement claim has merit, and referring the child to a private attorney for direct representation on his or her claim. If a private attorney does not accept the case within a reasonable amount of time, the attorney will prepare pro se pleadings, including a complaint, a motion for appointment of counsel, and other applicable pleadings. Attorneys also advocate for children during discipline and release reviews to the ODYS Release Authority, which impacts the juvenile's length of stay and release date.

The Juvenile Division also provides legal assistance for children who have been bound over to be tried as an adult, and convicted and sentenced to the Ohio Department of Rehabilitation and Correction. Representation includes a legal orientation during the intake process, and may include jail time credit, judicial release, appeal, and post-conviction.

In addition to direct representation, the Juvenile Division coordinates with and provides training to defense attorneys who handle juvenile work around the state, and provides systemic and legislative advocacy on right to counsel, quality of defense representation, and other substantive issues involving children in the criminal and juvenile justice systems.

## Legal Division

The Legal Division serves non-capital adult clients. The Appeals and Post-conviction Section represents clients in state and federal courts throughout Ohio, with the goal of providing the highest quality legal representation possible.

Legal Division attorneys strive to quickly determine whether a client's claims have arguable merit. If claims lack arguable merit, the attorney meets with or writes to the client to explain that determination. If claims have arguable merit, the attorney uses the latest research tools and, with the assistance of support staff, litigates the claim in the appropriate courts. Additionally, the division regularly accepts court appointments for client representation from trial and appellate courts across the state.

Recent initiatives of the Division include a new online resource outlining fundamental criminal law issues, and discussing key cases and statutes concerning those issues. The Division also reviews appellate decisions, as they are released, to determine whether particular cases might be suitable for appeal to the Supreme Court of Ohio. This has led to several cases being accepted and reviewed by the Court, that otherwise would not have been litigated. Another project has been an effort to evaluate whether "judicial sanction" sentences for prison inmates have a proper legal basis. Dozens of case files have been opened due to identifiable errors in court entries, and many clients have seen significant sentence reductions as a result.

The Legal Division also includes the Intake and Prison Legal Services Section, which performs four critical functions: reception center orientation, representation of inmates at hearings before the full parole board, representation at parole violation hearings, and file management and case distribution. OPD has attorneys stationed at the state prison reception centers who meet with and/or distribute printed information to inmates within weeks of their arrival. Potentially meritorious cases are identified and forwarded to the central office for further review and assignment.

## Mitigation and Investigation Division

The Mitigation and Investigation Division provides investigative services that include fact investigation and the development of life history summaries for the Legal, Juvenile, Death Penalty and Trial divisions, as well as the multi-county system in southern Ohio.

Criminal Investigators assist attorneys by developing evidence to be used during trial, after trial, or for state post-conviction or federal habeas. The criminal investigator's focus is twofold: analyzing and challenging the evidence the State uses to carry its burden of proof; and finding evidence the defendant needs to rebut the State's case.

Mitigation Specialists assist attorneys in developing evidence that will mitigate the punishment imposed on clients found guilty of capital or non-capital offenses. In non-capital cases, they work to develop community placements as an alternative to incarceration and to provide information that may lower the prison term, if one is imposed. In capital cases, mitigation specialists track down

*"The work produced by the Mitigation Specialists and Fact Investigators is often seen only by the case attorneys, thus many clients and family members do not know what the investigator has completed on the case or the import of that work."*

information about a client's life history, which attorneys rely on in their efforts to demonstrate that a death sentence is inappropriate for their client.

## **Policy & Outreach Division**

The Policy & Outreach Division was created in fiscal year 2015 to house the agency's growing policy, public outreach, and oversight efforts. In addition to providing direct client representation, the agency is statutorily mandated to supervise the compliance of county indigent defense systems with the Commission's standards and the agency's guidelines and to provide technical aid and assistance to local indigent defense service providers.

The Division serves as the main point of contact for county indigent defense systems and oversees reimbursement to the counties. It is also responsible for the agency's media and social media, legislation, and administrative policy.

## **Trial Division**

Ohio Revised Code §120.06(D) provides that OPD may represent an indigent person accused of a serious crime when appointed by a court or when a county public defender makes a request for assistance.

Trial Division attorneys represent clients in capital and other high-profile trials, generally when conflicts prevent local counsel from providing representation or the county otherwise lacks necessary resources. The Office of the Ohio Public Defender also accepts cases under the County Representation Program whenever resources permit. In most instances, these are clients or cases for which judges are unable to secure local counsel.

## **Wrongful Conviction Project**

The Wrongful Conviction Project, launched in the fall of 2009, seeks to identify potential wrongful Ohio court convictions, where other appellate remedies have failed. The Project was created to respond to the need for work on innocence claims where biological evidence (DNA) was not available. The Project investigates cases by analyzing the reliability of the evidence presented at trial and, when appropriate, provides representation.

Under the supervision of the Project director and the Project attorney, Capital University Law School students serve as externs for one or two semesters, earning school credit reviewing and investigating innocence claims. Through a private donation, the Wrongful Conviction Project was able to hire a legal intern from The Ohio State University Moritz College of Law for Fiscal Year 2015. The intern worked full time during the summer and part time during the school year.

The Project made great strides during Fiscal Year 2015, as the project attorney continued to litigate the cases of eight clients who maintain their innocence. The project attorney argued several cases in front of appellate courts this year, while continuing litigation in both federal and state court through new trial motions and other post-conviction pleadings.

## **Branch Offices**

Ohio Revised Code §120.04(C)(7) allows OPD to contract with a county public defender commission or a board of county commissioners to provide services that a county public defender would otherwise provide. The Office of the Ohio Public Defender operates two such programs: the Trumbull County Branch Office and the Multi-County Branch Office.

### *Multi-County Program*

The Office of the Ohio Public Defender began operation of the Multi-County Branch Office Program in fiscal year 1991. The program includes ten counties in the south and southeastern part of the state: Adams, Athens, Brown, Fayette, Jackson, Meigs, Pickaway, Pike, Ross, and Washington.

The Office of the Ohio Public Defender has established three branch offices in Athens, Ross, and Washington counties. These offices provide indigent criminal defense representation to these counties and offer support services to all participating counties. There are private attorneys or law firms working under contract in each of the ten counties.

The program is supported by financial contributions from both the counties and the state, with the state contributing a portion relatively equal to the percentage of overall state reimbursement.

### *Trumbull County Branch Office*

The Office of the Ohio Public Defender has maintained and operated a branch office in Trumbull County since 1984. Located in Warren, this office delivers indigent criminal defense representation in the courts of Trumbull County.

The office staff includes attorneys, investigators, a paralegal, and administrative assistants. The Office of the Ohio Public Defender also contracts with local attorneys in order to afford flexibility in managing caseloads. Cases handled by staff and contract attorneys range from misdemeanors to capital offenses, including juvenile cases and appeals.

At the common pleas level, branch office attorneys provide representation before all four general division judges, as well as in the juvenile department of the domestic relations division. At the municipal and county court levels, representation is provided in the cities of Niles, Newton Falls, Girard, Warren, Cortland, and Brookfield. Attorneys also provide appellate representation.

The state and county jointly fund the operation of the Trumbull County Branch Office. The percentage paid by each mirrors the reimbursement rate applicable to all counties under Chapter 120 of the Ohio Revised Code. Approximately ten percent of the Trumbull County contract obligation comes from the participating municipalities. ♦



# Office of the Ohio Public Defender

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