



Office of the Ohio Public Defender

Timothy Young, State Public Defender

VIA EMAIL: sdulaney@ccao.org
& Ordinary Mail

October 22, 2019

Suzanne Dulaney
Executive Director
County Commissioners Association of Ohio
209 East State Street
Columbus, OH 43215-4309

RE: Indigent Defense Improvement and Increased Reimbursement

Dear Ms. Dulaney:

I write today about indigent defense reimbursement and reports the Office of the Ohio Public Defender (OPD) has received regarding the County Commissioners Association of Ohio's (CCAO) messaging on the same. Numerous county-level parties have reached out to the OPD requesting information and assistance as they prepare the indigent defense portion of their budgets. In the course of those conversations and meetings, it has been reported that the CCAO is advising counties to not use any of the significant increase in state indigent defense funding to improve indigent defense services, but rather to use the entirety of the increase in funding as a supplement to the county general funds for use in other areas of county operations. After hearing this repeated from multiple county commissioners, I called the CCAO's Legislative Counsel on October 8th and left a message expressing concern regarding this messaging and requested a meeting to discuss this matter. To date, I have not received a response of any kind.

The increase to indigent defense reimbursement funding was intended to address two issues. First, it was intended to allow counties to make necessary improvements to their indigent defense systems. Throughout the budget process, the OPD consistently messaged – whether in testimony or in our meetings with Representatives, Senators, or the Governor – that many counties need to raise appointed counsel rates, many set in the 1980's, and hire additional staff to meet national and state caseloads standards. This investment is intended to help counties improve their indigent defense services to build strong, constitutionally sound programs in every county. As Governor DeWine stated when he introduced his proposed budget: "This will help to ensure that every Ohioan, no matter their means or lack of means, has a fair trial, as is their constitutional right."ⁱ

Second, the increase in reimbursement is intended to restore some funding to the counties that was lost from local government funds. Had this money been solely intended to benefit county general funding it could have simply been designated as a local government fund increase elsewhere in the biennial budget. The Governor and the General Assembly purposely put increased funding into indigent defense.

These two purposes are not mutually exclusive, they do not present a county with a binary choice of either funding a sound, constitutional program or increasing local government funding. The increase in State dollars is substantial enough to easily allow counties in Ohio to accomplish both purposes.

The increase in funding to indigent defense reimbursement did not transfer control and responsibility for indigent defense to the State. Each county still maintains and controls decisions regarding its indigent defense system – including the selection of the delivery model, the budget, and the overall structure. It remains each county's duty to set a budget and fund a system that meets constitutional and statutory standards.

The messaging from CCAO to not use this increased funding to make necessary improvements to indigent defense services could cause harm to counties. As you are aware, since the inception of the indigent defense system in 1976, in order to qualify for reimbursement, the local decisions on indigent defense must meet the standards required by Ohio Administrative Code Chapter 120 and Ohio Revised Code Chapter 120. Failing to make improvements that meet these standards, and are essential to effective representation, places a county at risk for reduced reimbursement and/or constitutional challenges from defendants or classes of defendants.

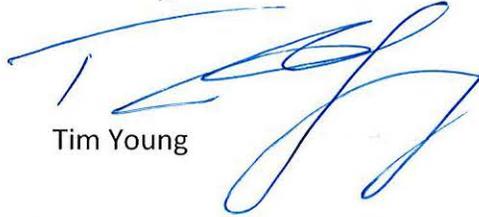
In FY2019, OPD reimbursed the counties at 42%. That was done with \$60 million dollars. That means the counties cumulative total expenditure on indigent defense was \$143 million. OPD has \$120 million for reimbursement in FY2020. At 70% reimbursement, OPD has not only calculated present cost but included inflationary and improvement costs. OPD has \$155 million for reimbursement in FY2021. At 90%, OPD has again calculated present cost, inflationary cost, and system improvement. This allows counties to make improvements across both years of the biennium, spend fewer local dollars, and receive substantially more in reimbursement.

Indigent defense is failing or on the verge of failing in numerous places across Ohio. Because counties have had to fund a disproportionate share for so long, many systems have long stagnated. Counties can and should make necessary improvements to their indigent defense systems to meet these standards – addressing pay parity, caseloads, and long stagnant rates and caps. In support, the Ohio State Bar Association and the Ohio Association of Criminal Defense Lawyers passed independent resolutions encouraging counties to increase their rates and caps for appointed counsel.ⁱⁱ



Because the State did not pass an unfunded mandate but actually funded it, counties can improve their indigent defense services, meet the obligations to provide effective defense services, pay less in local dollars, and receive significant increases in the funds returning to their counties. Instructing counties to simply 'pocket' these increases, is contrary to the most basic duties counties have regarding the right to counsel. I respectfully ask that the CCAO contact its members and correct any misunderstandings in messaging, and work with OPD in advising the counties regarding the use of the increased funding.

Sincerely,



Tim Young

cc: Office of Governor DeWine
Ohio Senate Majority and Minority Leadership
Ohio House Majority and Minority Leadership
Administrative Director's Office, Ohio Supreme Court

ⁱ <https://www.cleveland.com/politics/2019/03/state-money-to-hire-lawyers-for-poor-ohioans-could-hit-record-levels-gov-mike-dewines-budget.html>

ⁱⁱ <https://www.opd.ohio.gov/Home/OPD-News/ohio-state-bar-associations-resolution-to-support-increased-rates-for-appointed-counsel>

