



Judicial Impact Statement

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JUDICIAL IMPACT STATEMENT: INDIGENT DEFENSE

Sponsors

SB 139 Sen. Uecker
HB 186 Reps. Boose,
Gerberry

Title Information

To modify the funding structure for indigent defense, to modify the process by which counsel is appointed to indigent defendants, and to centralize authority of indigent representation with the State Public Defender

Summary

Ohio judges have a constitutional responsibility to provide fair trials (Ohio Constitution § 1.16 and U.S. Constitution Article VI) and representation by counsel has been found necessary to obtaining a fair trial for any crime that could result in the loss of liberty (*Argersinger v. Hamlin*, 407 U.S. 25, 1972). A reasoned reform of the current public defender system would improve the quality of representation provided to indigent defendants, reduce the workload of court personnel, and could reduce the number of cases that are overturned on appeal. Centralizing the control in the State Public Defender and relieving the Counties of the funding burden will not necessarily yield these results.

Background

In 2006, the Ohio Judicial Conference formed a collaborative group to look at the subject of indigent defense and consider the Report and Recommendations of the Supreme Court of Ohio's Task Force on Pro Se and Indigent Litigants. There was general agreement among the group members that the General Assembly should provide more funds for indigent criminal defense and that those funds should be used to improve indigent defense, rather than maintain the status quo.

In 2013, Senator Uecker introduced S.B. 139 to modify the public defender system in Ohio and to alter the funding incrementally every year so that eventually the State will pay 100% of the cost of indigent defense, except in death penalty cases. A companion bill, H.B. 186, was introduced by Representatives Boose and Gerberry in the House of Representatives.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

Quality of Indigent Defense

The current public defense system suffers from a lack of uniformity and accountability; in many counties, indigent defense is not of high quality and in some it is entirely inadequate. The foremost goal of any reform of the system should be to improve the quality of indigent defense, not to simply release counties of their responsibility to fund the system.

Minimum qualification and experience standards need to be reviewed and enforced (O.A.C. 120-1-10). An effective mentoring process and enhanced training standards for lawyers new to criminal defense work would greatly improve the quality of counsel provided by public defenders and appointed counsel.

Only after improvements have sufficiently ensured the quality of indigent defense, and if there are remaining state funds that allow relieving counties of this financial burden, should the legislature exercise its responsibility to make a policy decision concerning relieving the counties of more financial responsibility.

Local Control

The bill aims to replace local control with complete authority vested in the State Public Defender (e.g. § 120.04(B)(13): the state public defender shall determine the system for indigent defense used by a county; §120.04(B)(14): the state public defender shall establish hourly rates and per case minimums to be paid to appointed counsel; § 120.13(A): upon approval of the state public defender, the county commissioners may establish or maintain a county public defender system; § 120.23(A): the state public defender shall appoint each regional director for each regional state public defender office established by the state public defender; § 120.23(C): the state public defender shall calculate total costs for providing services within the county and shall send to the county in which the services are rendered a bill; § 120.33(A): upon approval of the state public defender, the board of county commissioners may adopt a resolution to pay counsel who are either personally selected by the indigent person or appointed by the court).

The current system that delivers counsel to indigent defendants is entirely local and county commissioners who appoint and pressure members of the local public defender commissions often have little understanding of the value of indigent defense. In fact, they often resent the expenditure of limited public resources for this purpose and are much more inclined to fund police- and prosecution-oriented expenditures. Beyond the well-settled constitutional requirements for indigent defense, the appropriate quality of legal representation of both the defense and prosecution in a criminal justice system leads to more effective and efficient rendering of justice. It additionally leads to greater public confidence in the justice system.

A compromise needs to be struck between a system run entirely by a centralized state entity and local control by county commissioners who are not invested in the quality of indigent defense. The use of public defense or appointed counsel should continue to be overseen locally to ensure service is appropriate and adequate. Any decision to delegate authority to the state should be a local decision made by the Board of County Commissioners in conjunction with the courts, who necessarily have a

significant role, as the courts are the venues where public defense is rendered and therefore directly experience the impact of the service.

Under O.R.C. §§ 309.06 and 309.07, Ohio Courts of Common Pleas currently approve compensation of assistants, clerks, stenographers, and secret service officers in the budget of the local prosecuting attorney's office; this authority could be extended to approval of the budgets of the local public defenders' offices. The court could then determine whether the public defender's office is in parity with the prosecutor's office and advocate for increased funds when and where they are needed. This is more consistent with the inherent authority of the court to ensure a fair trial and the constitutional principle of separation of powers. Expanding the role and authority of the state public defender attempts to divert this authority to the executive branch.

Local discretion should also extend to the authority to set the amounts to be collected in the form of court costs or fees to fund local indigent defense services. Because there should be no toll upon the citizenry to attain justice in the courts of law, court costs should be assessed only when absolutely necessary and should be nominal. Currently, the representation of indigent defendants is partially paid for through the state's Indigent Defense Support Fund¹, which is supplemented with various court costs collected locally. Ohio Revised Code Sections 2937.22, 2949.091, and 2949.094 require various court costs, a portion of which goes to the Indigent Defense Support Fund. If the State of Ohio begins to fully fund the work of public defenders in Ohio those funds need to come from General Revenue Funds and the statutory court costs currently designated to fund the state's Indigent Defense Support Fund should be effectively eliminated or reduced over time. The Ohio Judicial Conference Policy Statement on Court Costs provides, "*The funding of the courts of justice should fall evenly upon the people and the courts should be funded primarily from the general funds of the state or local governments where their jurisdiction lies.*" In no event should the burden on the courts to fund these constitutional services be increased in order to relieve local governments or the state of the responsibility to provide a fair judicial system. (See Policy Statement on Court Costs attached.)

Membership of State Public Defender Commission

The bill creates the State Public Defender Commission, which consists of nine members. Under the provisions of the bill, no less than two of the members must be attorneys, which means it is possible that 7 members of a Commission whose sole mission is legal representation may be non-attorneys (§ 120.01). Non-attorneys should not comprise a significant membership component of the Commission. In fact, most if not all, members of the State Public Defender Commission should be attorneys, because they have a complete understanding of what is involved in legal representation. This would be especially important if that commission was to be granted as much authority as is proposed by S.B. 139 and H.B. 186.

Judicial Impact

The current funding structure for indigent defense creates an environment wherein public defenders offices are sometimes underfunded and appointed counsel fee schedules set so low they undermine any opportunity for an adequate level of advocacy, which drastically and negatively affects the quality of representation, the efficiency of the local justice system and public confidence in the courts

¹ The Indigent Defense Support Fund is statutorily created in O.R.C. § 120.08.

in some Ohio counties. Courts sometimes intervene, often on a case by case basis, to ensure fairness or confront county commissions to improve the funding on a general basis. Moving the responsibility for funding and managing these services to a single state officer or authority does not necessarily improve the current system. Instead, it moves the system further from the influence of the people and courts that it serves and makes resolution of differences more, not less, difficult and confrontational.

Recommendation

The Ohio Judicial Conference supports an improvement in the quality of the public defender system in Ohio. It supports an increased state share of indigent defense expenses, as long as those expenses directly support improvement efforts. It supports an adequately funded system of improved accountability for appointed counsel, including enhanced training standards, minimum experience standards, and an effective mentoring process. It supports judicial discretion in deciding whether to delegate authority over public defense wholly or in part to state authorities, in deciding what court costs or fees should be charged to fund local indigent defense services, and in determining if counsel, whether a public defender or court appointed, is adequately representing an indigent client. Any mandatory increase in court costs relative to indigent defense, and any attempt to redirect court costs currently collected into the Indigent Defense Support Fund would be directly in conflict with the Judicial Conference policy on court costs. The Ohio Judicial Conference supports the decrease, and elimination over time, of statutory court costs associated with the Indigent Defense Support Fund.