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Bill Analysis
Legislative Service Commission

S.B. 85
123rd General Assembly
(As Introduced)

Sens. Mumper, White, Schafrath, Kearns, Latta

BILL SUMMARY

- Requires the State Public Defender to provide technical assistance to political subdivisions and courts of record on methods for reducing the costs of providing legal representation to indigent persons.
- Requires a financial disclosure form to be included with each request for payment from a county for specified appointed counsel for indigent persons and prohibits the State Public Defender from reimbursing a county for the cost of appointed counsel if the financial disclosure form does not accompany the request for reimbursement.
- Requires the state to appropriate the money for and reimburse counties for 50% of the total costs associated with the cost of county and joint county public defender offices and county appointed counsel systems.
- Provides a specific procedure for the correction of over payments and under payments of the required 50% reimbursement for those offices and systems.

CONTENT AND OPERATION

Required and permitted activities of the State Public Defender

Existing law requires the State Public Defender to perform specified activities and to assume specific duties pursuant to R.C. 120.04 (see **COMMENT 1** and **2**). Those activities and duties include maintenance of the State Public Defender's office, supervising the compliance of county and joint public defender offices and county appointed counsel systems with established standards, establish standards and guidelines for the reimbursement of counties for the operation of county and joint public defender offices and county appointed counsel systems, and provide technical aid and assistance to county and joint public defender

offices, including representation and assistance on appeals (R.C. 120.04(B)(2), (3), (7), and (13)).

Under the bill, the State Public Defender additionally must provide technical aid and assistance to political subdivisions and courts of record on methods that may be applied to reduce the costs of providing legal representation to indigent persons. The bill does not otherwise affect the duties of the State Public Defender in R.C. 120.04. (R.C. 120.04(B)(14).)

Payment or reimbursement for appointed counsel for indigent persons

Existing law

In lieu of using a county public defender or joint county public defender to represent indigent persons, the board of county commissioners of any county may adopt a resolution to pay counsel who are either personally selected by the indigent person or appointed by the court (appointed counsel system). The board of county commissioners of such a county must establish a schedule of fees by case or on an hourly basis to be paid to counsel provided pursuant to the resolution adopting an appointed counsel system for indigent defendants. (R.C. 120.04(A) and (A)(3).)

Counsel selected by an indigent person or appointed by the court at the request of an indigent person in a county that adopts a resolution to pay appointed counsel, except for counsel appointed to represent a person charged with any violation of an ordinance of a municipal corporation that has not contracted with the county commissioners for the payment of appointed counsel, must be paid by the county, and the appointed counsel receives the compensation and expenses the court approves. Each request for payment for an appointed counsel must be accompanied by an affidavit of indigency completed by the indigent person on forms prescribed by the State Public Defender. The court cannot approve compensation and expenses for an appointed counsel that exceed the amount fixed pursuant to the schedule of fees established by the board of county commissioners.

The county must pay the compensation and expenses approved by the court. The county auditor must draw a warrant on the county treasurer for the payment of the counsel in the amount fixed by the court plus the expenses the court fixes and certifies to the auditor. The auditor must report periodically to the board of county commissioners and the Ohio Public Defender Commission the amounts paid out pursuant to court approval. The board of county commissioners then certifies those amounts to the State Public Defender for reimbursement. *If a request for reimbursement is not accompanied by an affidavit of indigency completed by the indigent person on forms prescribed by the State Public Defender, the State Public*

Defender is not permitted to pay the requested reimbursement. (R.C. 120.38(A)(4).)

Operation of the bill

The bill modifies existing law by requiring that each request for payment by the county of the compensation and expenses of an appointed counsel must be accompanied by *a financial disclosure form* (added by bill) and an affidavit of indigency (existing law) completed by the indigent person on forms prescribed by the State Public Defender. In addition, under the bill, each request by a county for reimbursement from the State Public Defender for the compensation and expenses of an appointed counsel must be accompanied by a financial disclosure form and an affidavit of indigency that are completed by the indigent person on forms prescribed by the State Public Defender. If a request for reimbursement is not accompanied by *a financial disclosure form and* an affidavit of indigency completed by the indigent person on forms prescribed by the State Public Defender, the State Public Defender is not permitted to pay the requested reimbursement. (R.C. 120.33(A)(4).)

Reimbursement of counties for 50% of the total costs associated with the defense of indigent persons

Existing law

Under existing R.C. 120.18, board of county commissioners of a county with a county public defender may certify the county public defender commission's report to the State Public Defender for reimbursement of 50% of the costs of providing counsel for indigent defendants. Under R.C. 120.28, the joint board of county commissioners of the counties with a joint county public defender may certify the joint county public defender commission's report to the State Public Defender for reimbursement of 50% of the costs of providing counsel for indigent defenders. Under R.C. 120.33, the board of county commissioners of a county that uses an appointed counsel system in lieu of a county or joint county public defender's office may certify to the State Public Defender for reimbursement the county auditor's report of the amounts paid for appointed counsel for indigent defendants. The State Public Defender reviews each report and, in accordance with applicable standards, guidelines, and maximums, prepares a voucher for 50% of the total cost of each county public defender's office, joint county public defender's office, and appointed counsel system for the period of time covered by the certified report and a voucher for 50% of the reimbursable costs and expenses for providing the defense in a capital case. (R.C. 120.18, 120.28, and 120.33.)

The total amount of money paid to all counties in any fiscal year pursuant to R.C. 120.18, 120.28, and 120.33 for the reimbursement of a percentage of the counties' cost of operating county public defender offices, joint county public defender offices, and county appointed counsel systems must not exceed the total amount appropriated for that fiscal year by the General Assembly for the reimbursement of the counties for the operation of the offices and systems. If the amount appropriated by the General Assembly in any fiscal year is insufficient to pay 50% of the total cost in the fiscal year of all county public defender offices, all joint county public defender offices, and all county appointed counsel systems, the amount of money paid in that fiscal year pursuant to R.C. 120.18, 120.28, and 120.33 to each county for the fiscal year must be reduced proportionately so that each county is paid an equal percentage of its total cost in the fiscal year for operating its county public defender system, its joint county public defender system, and its county appointed counsel system.

The total amount of money paid to all counties in any fiscal year pursuant to R.C. 120.35 for the reimbursement of a percentage of the counties' costs and expenses of conducting the defense in capital cases must not exceed the total amount appropriated for that fiscal year by the General Assembly for the reimbursement of the counties for conducting the defense in capital cases. If the amount appropriated by the General Assembly in any fiscal year is insufficient to pay 50% of the counties' total costs and expenses of conducting the defense in capital cases in the fiscal year, the amount of money paid in that fiscal year pursuant to R.C. 120.35 to each county for the fiscal year must be reduced proportionately so that each county is paid an equal percentage of its costs and expenses of conducting the defense in capital cases in the fiscal year. (R.C. 120.34.)

If any county receives an amount of money pursuant to section 120.18, 120.28, 120.33, or 120.35 of the Revised Code that is in excess of the amount of reimbursement it is entitled to receive pursuant to R.C. 120.34, the State Public Defender must request the board of county commissioners to return the excess payment, and the board of county commissioners, upon receipt of the request, must direct the appropriate county officer to return the excess payment to the state.

Within 30 days of the end of each fiscal quarter, the State Public Defender shall provide to the Office of Budget and Management and the Legislative Budget Office of the Legislative Service Commission an estimate of the amount of money that will be required for the balance of the fiscal year to make the payments required by R.C. 120.18, 120.28, 120.33, and 120.35. (R.C. 120.34.)

Operation of the bill

Under the bill, the total amount of money appropriated by the General Assembly and paid to all counties for each fiscal year pursuant to R.C. 120.18, 120.28, 120.33, and 120.35 for the reimbursement of a percentage of the counties' cost of operating county public defender offices, joint county public defender offices, and county appointed counsel systems must equal 50% of the costs to the counties for the operation of the offices and systems. If the amount appropriated by the General Assembly in any fiscal year is insufficient to pay 50% of the total cost in the fiscal year of all county public defender offices, all joint county public defender offices, and all county appointed counsel systems, the State Public Defender must distribute the available balance of existing funds appropriated by the General Assembly for this purpose proportionately to each county and, within 30 days of the end of each fiscal quarter, must provide to the Office of Budget and Management and the Legislative Budget Office of the Legislative Service Commission an estimate of the amount of money that will be required to pay 50% of the counties' cost of operating the offices and systems for the balance of the fiscal year to make the payments required by R.C. 120.18, 120.28, 120.33, and 120.35. (R.C. 120.34(A) and (B), 120.18(A), 120.28(A), and 120.33(A)(4).)

In July of each fiscal year, the State Public Defender must determine the percentage of reimbursement that each county received pursuant to R.C. 120.18, 120.28, 120.33, and 120.35 in the previous fiscal year. If a county received less than 50% reimbursement pursuant to those sections, the State Public Defender must reimburse that county in an amount equal to the difference between what it received pursuant to those sections and 50% of the total cost of that county's public defender offices and appointed counsel systems for the previous fiscal year. If a county received more than 50% reimbursement pursuant to those sections, the State Public Defender must subtract from that county's next payment an amount equal to the difference between what it received pursuant to those sections and 50% of the total cost of that county's public defender offices and appointed counsel systems for the previous fiscal year. (R.C. 120.34(C)(1).)

The State Public Defender's office must request funding in each biennial budget that is estimated to be sufficient to pay each county 50% of the total cost of that county's public defender offices and appointed counsel systems for that biennium (R.C. 120.34(C)(2)).

COMMENT

1. R.C. 120.04(B) requires the State Public Defender to do all of the following:

(a) Maintain a central office in Columbus. The central office must be provided with a library of adequate size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment.

(b) Appoint assistant state public defenders, all of whom must be attorneys admitted to the practice of law in this state, and other personnel necessary for the operation of the State Public Defender's office. Assistant state public defenders must be appointed on a full-time basis. The State Public Defender, assistant state public defenders, and employees appointed by the State Public Defender must not engage in the private practice of law.

(c) Supervise the compliance of county public defender offices, joint county public defender offices, and county appointed counsel systems with standards established by rules of the Ohio Public Defender Commission;

(d) Keep and maintain financial records of all cases handled and develop records for use in the calculation of direct and indirect costs, in the operation of the office, and report periodically, but not less than annually, to the Commission on all relevant data on the operations of the office, costs, projected needs, and recommendations for legislation or amendments to court rules, as may be appropriate to improve the criminal justice system;

(e) Collect all moneys due the state for reimbursement for legal services under the Public Defender Law and under R.C. 2941.51 and institute any actions in court on behalf of the state for the collection of such sums that the State Public Defender considers advisable. Except as provided otherwise in R.C. 120.06(D), all moneys collected by the State Public Defender under the Public Defender Law and R.C. 2941.51 must be deposited in the state treasury to the credit of the client payment fund. All moneys credited to the fund must be used by the State Public Defender to appoint assistant state public defenders and to provide other personnel, equipment, and facilities necessary for the operation of the State Public Defender's office, to reimburse counties for the operation of county public defender offices, joint county public defender offices, and county appointed counsel systems, or to provide assistance to counties in the operation of county indigent defense systems.

(f) With respect to funds appropriated to the Commission to pay criminal costs, perform the duties imposed by the section that regulates the payment of those costs;

(g) Establish standards and guidelines for the reimbursement, pursuant to specific sections of the Revised Code, of counties for the operation of county

public defender offices, joint county public defender offices, and county appointed counsel systems and for other costs related to felony prosecutions;

(h) Establish maximum amounts that the state will reimburse the counties pursuant to specific sections of the Revised Code for providing counsel for indigents;

(i) Establish maximum amounts that the state will reimburse the counties for each specific type of legal service performed by a county appointed counsel system;

(j) Administer R.C. 120.18, 120.28, 120.33, 2941.51, and 2949.19 of the Revised Code and make reimbursements pursuant to those sections;

(k) Administer the program established for the charitable public purpose of providing financial assistance to legal aid societies. Neither the State Public Defender nor any of the State Public Defender's employees who is responsible in any way for the administration of that program and who performs those administrative responsibilities in good faith is in any manner liable if a legal aid society that is provided financial assistance under the program uses the financial assistance other than in accordance with sections 120.51 to 120.55 of the Revised Code or fails to comply with the requirements of those sections.

(l) Establish an office for the handling of appeal and postconviction matters;

(m) 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, including representation and assistance on appeals.

2. R.C. 120.04(C) authorizes the State Public Defender to do the following:

(a) In providing legal representation, conduct investigations, obtain expert testimony, take depositions, use other discovery methods, order transcripts, and make all other preparations that are appropriate and necessary to an adequate defense or the prosecution of appeals and other legal proceedings;

(b) Seek, solicit, and apply for grants for the operation of programs for the defense of indigent persons from any public or private source and receive donations, grants, awards, and similar funds from any lawful source. The funds must be deposited in the state treasury to the credit of the public defender gifts and grants fund.

(c) Make all the necessary arrangements to coordinate the services of the office with any federal, county, or private programs established to provide legal representation to indigent persons and others and to obtain and provide all funds allowable under any such programs;

(d) Consult and cooperate with professional groups concerned with the causes of criminal conduct, the reduction of crime, the rehabilitation and correction of persons convicted of crime, the administration of criminal justice, and the administration and operation of the State Public Defender's office;

(e) Accept the services of volunteer workers and consultants at no compensation other than reimbursement for actual and necessary expenses;

(f) Prescribe any forms that are necessary for the uniform operation of R.C. Chapter 120.;

(g) Contract with a county public defender commission or a joint county public defender commission to provide all or any part of the services that a county public defender or joint county public defender is required or permitted to provide by R.C. Chapter 120. or contract with a board of county commissioners of a county that is not served by a county public defender commission or a joint county public defender commission for the provision of services in accordance with R.C. 120.33. All money received by the State Public Defender pursuant to such a contract must be credited to the county representation fund.

(h) Authorize persons employed as criminal investigators to attend the Ohio Peace Officer Training Academy or any other peace officer training school for training;

(i) Procure a policy or policies of malpractice insurance that provide coverage for the State Public Defender and assistant state public defenders in connection with malpractice claims that may arise from their actions or omissions related to responsibilities derived pursuant to Chapter 120.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-23-99	p. 145

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