Chairwoman Grossman and Members of the Subcommittee, my name is Tim Young, and I am the Ohio Public Defender. Thank you for this opportunity to testify about my office’s budget for the upcoming biennium.

Unfortunately, I need to focus my testimony on how House Bill 64 falls short in its support for Ohio’s indigent defense system, and ask this Subcommittee to recommend increased funding.

**Central office solvency**

One focus of the budget request we submitted last October was ensuring fiscal solvency for our central office. Over the past several years, our operating costs have been gradually increasing, but our budget has remained flat. Based on current projections, our central office’s operating budget will be out of structural balance in fiscal year 2017.

To prevent this imbalance, our budget request proposed a restructuring of General Revenue Funds from two line items (019403 and 019404) that are currently used for the state’s share of the agency’s branch offices. Dividing the funds from those two small lines between our main GRF operating line item (019401) and the GRF line item for reimbursement (019501) would restore long-term structural balance to the central office’s operating budget and keep reimbursement at its current rate of 40 percent, without requiring any additional expenditures from the state.

That restructuring proposal was not included in the budget bill. Instead, HB 64 includes temporary language that changes the allocation of funds in the Indigent Defense Support Fund by one percentage point. This fund receives revenue dedicated to indigent defense, from sources such as court costs, license reinstatement fees, and bail surcharges. The fund is currently divided 88/12: 88 percent is dedicated to county reimbursement, and 12 percent supports the operations of the central office. Temporary language in HB 64 shifts one percent to the central office, splitting the fund 87/13.
While we appreciate this effort to ensure our central office’s solvency, we have two concerns about this approach. First and foremost, shifting one percentage gives my office only about half the money we need: we will still be about $450,000 short each year. Second, my office worked with the county commissioners for several years to ensure dedicated funding for indigent defense. Shifting the division of those funds while not actually resolving our solvency issues may give the appearance that the central office is being pitted against the counties, when in reality we are partners in the provision of indigent defense services.

My office provides an array of services — direct representation to clients, reimbursement to counties, support to practitioners — and about 80 percent of our budget pays for our personnel. If we need to cut costs, we have to cut people. And that means cutting services.

In fiscal year 2001, the state office had 169 full-time equivalent positions; now, we have only 138. The funding levels in HB 64 will allow us to keep only 132. We have cut personnel and reduced services for a decade and a half, despite increasing caseloads statewide, growing prison populations, and many dozens of new criminal laws enacted by the General Assembly.

I would love to have even a fraction of the employees we have lost over the years. But at the very least, I ask this Subcommittee to ensure that my office can remain fiscally solvent, retain our current staff, and not be forced to once again reduce the services we provide throughout the state.

Systemic improvements

In addition to our solvency issue, my agency is dedicated to improving Ohio’s indigent defense system. In 1992 and again in 2006, Ohio Supreme Court task forces studied Ohio’s indigent defense system and found it to be inefficient, ineffective, and in need of systemic reforms. It has been 23 years since the first of those reports, and Ohio has yet to implement a single reform recommendation. Unfortunately, HB 64 also does not address the shortcomings in Ohio’s indigent defense system.

In the 130th General Assembly, House Bill 186 and Senate Bill 139 proposed shifting the system from the counties to the state, over a six-year period. My office and the bills’ sponsors quickly realized that idea was a bridge too far, and that we needed to identify incremental ways to improve the system.

Over the past year, in consultation with legislators, county commissioners, and numerous interested parties, my office has developed a proposal consisting of three interrelated reforms:

1. Increase state reimbursement to 50 percent.

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2. Allow my office to establish a statewide, uniform set of hourly rates and per-case caps for appointed counsel.
3. Evaluate local delivery systems and base reimbursement on system standards and accountability.

Implemented together, these three reforms would be an important first step toward addressing the many shortcomings of Ohio’s indigent defense system, ensuring that the system uses taxpayer money appropriately, and improving accountability for the state’s expenditure of funds.

My office is charged with supervising the compliance of county systems with the rules and standards established by the state public defender commission. But years of budget cuts and flat funding have left us without the resources to provide oversight, and the state’s diminished financial contribution to the system has left the state with little leverage to encourage improvements in county systems. Increasing state reimbursement to at least 50 percent and giving my office the resources we need to assess and provide assistance to county systems will give the state the leverage, resources, and information it needs to improve the provision of indigent defense services and to ensure state funds are used effectively.

Additionally, studies of outcomes in indigent criminal cases have found that Ohio’s chronic underpaying of appointed counsel leads to worse outcomes for their clients, including longer sentences. This results in increased costs in other areas of the criminal justice system, including jail and prison populations. So we must also ensure that rates paid to appointed counsel are consistent across the state and sufficient to allow court-appointed attorneys to meet constitutional standards of representation.

To implement these reforms, the state would need to increase its investment in the indigent defense system by about $20 million. The 2006 Task Force that assessed Ohio’s indigent defense system found that: “Funding dedicated to indigent criminal defense in Ohio ... totals $128.8 million in fiscal year 2007. The task force believes, based on its understanding of the needs of the system, that $148.7 million is a more appropriate figure.” With the additional state funds proposed here, Ohio will still be spending less on criminal indigent defense than was recommended nearly a decade ago.

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

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2 R.C. §120.04(B)(3).
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 on the system. 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.

Chairwoman Grossman, Members of the Subcommittee, thank you for this opportunity to testify. I hope you agree that Ohio’s indigent defense system needs additional state support, and I will be happy to answer any questions you may have.
Proposed revenue changes

Ensuring central office solvency

To restructure existing GRF to ensure long-term solvency for the central office, maintain county reimbursement at 40 percent, and expend no additional state funds, while keeping the IDSF split 88/12, line item appropriations in HB 64 would change to the following amounts:

Table 1

<table>
<thead>
<tr>
<th>Fund</th>
<th>ALI</th>
<th>ALI Title</th>
<th>FY 2015 est.</th>
<th>FY 2016 rec.</th>
<th>FY 2017 rec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>GRF</td>
<td>019401</td>
<td>State Legal Defense Services</td>
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<td>4,148,980.00</td>
<td>4,314,949.00</td>
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<td>GRF</td>
<td>019403</td>
<td>Multi-County: State Share</td>
<td>1,455,103.00</td>
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<td>-</td>
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<tr>
<td>GRF</td>
<td>019404</td>
<td>Trumbull County: State Share</td>
<td>420,259.00</td>
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<td>-</td>
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<td>GRF</td>
<td>019501</td>
<td>County Reimbursement</td>
<td>9,620,268.00</td>
<td>10,367,505.00</td>
<td>10,201,536.00</td>
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<td>5DY0</td>
<td>019618</td>
<td>IDSF-County Reimbursement</td>
<td>39,182,681.00</td>
<td>39,270,930.00</td>
<td>40,865,202.00</td>
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<tr>
<td>5DY0</td>
<td>019619</td>
<td>IDSF-State Office</td>
<td>5,581,695.00</td>
<td>5,323,095.00</td>
<td>5,462,467.00</td>
</tr>
</tbody>
</table>

Implementing three-part systemic reform effort

Two sources of non-GRF funding could offset the vast majority of the costs of these reforms: surcharges on liquor licenses and vehicle registrations.\(^5\) A 10 percent surcharge on liquor licenses would generate approximately $3.7 million annually, and a $1 surcharge on each yearly vehicle registration would generate approximately $11.7 million annually. This money would be deposited into the Indigent Defense Support Fund, which would continue to be divided 88/12.

In order to increase state reimbursement to 50 percent, while accounting for increased hourly rates and per-case caps for appointed counsel and holding harmless counties that would experience increased costs during the first year, the state would need to allocate an additional $6.5 million during the first year. Costs would gradually increase, as hourly rates for appointed counsel are slowly increased to a uniform level that adequately compensates quality attorneys.

Implementing these funding changes would increase the line item appropriations in HB 64 to the following amounts (and would replace the amounts for lines 019501, 019618, and 019619 shown in Table 1 above):

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\(^5\) Alcohol and vehicles are involved in a significant portion of criminal cases, particularly in municipal and county courts (e.g. assault, domestic violence, operating a vehicle while intoxicated, driving under suspension, etc.), so a clear nexus exists between these revenue sources and the services provided by Ohio’s indigent defense system.
Table 2

<table>
<thead>
<tr>
<th>Fund</th>
<th>ALI</th>
<th>ALI Title</th>
<th>FY 2015 est.</th>
<th>FY 2016 rec.</th>
<th>FY 2017 rec.</th>
</tr>
</thead>
<tbody>
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<td>16,867,505.00</td>
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<td>54,417,202.00</td>
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<tr>
<td>SDY0</td>
<td>019619</td>
<td>IDSF-State Office</td>
<td>5,581,695.00</td>
<td>6,037,420.00</td>
<td>7,011,229.00</td>
</tr>
</tbody>
</table>

Language to impose surcharges on liquor licenses and vehicle registrations

**Sec. 120.08.** There is hereby created in the state treasury the indigent defense support fund, consisting of money paid into the fund pursuant to sections 4303.24, 4503.02, 4507.45, 4509.101, 4510.22, and 4511.19 of the Revised Code and pursuant to sections 2937.22, 2949.091, and 2949.094 of the Revised Code out of the additional court costs imposed under those sections. The state public defender shall use at least eighty-eight per cent of the money in the fund for the purposes of reimbursing county governments for expenses incurred pursuant to sections 120.18, 120.28, and 120.33 of the Revised Code and operating its system pursuant to division (C)(7) of section 120.04 of the Revised Code and division (B) of section 120.33 of the Revised Code. Disbursements from the fund to county governments shall be made at least once per year and shall be allocated proportionately so that each county receives an equal percentage of its total cost for operating its county public defender system, its joint county public defender system, its county appointed counsel system, or its system operated under division (C)(7) of section 120.04 of the Revised Code and division (B) of section 120.33 of the Revised Code. The state public defender may use not more than twelve per cent of the money in the fund for the purposes of appointing assistant state public defenders, providing other personnel, equipment, and facilities necessary for the operation of the state public defender office, and providing training, developing and implementing electronic forms, or establishing and maintaining an information technology system used for the uniform operation of this chapter.

**Sec. 4303.24.** (A) All application fees shall be remitted to the division of liquor control when applications are filed. The pendency, priority, or validity of an application for a permit or duplicate permit received by the division shall not be affected because the division did not issue the permit applied for or the applicant failed to appeal to the liquor control commission.

The division, prior to the granting of a permit or duplicate permit applied for, shall notify, by certified mail, the applicant or the applicant’s authorized agent. The applicant or the applicant’s authorized agent, within thirty days after the mailing of that notice, shall pay to the division the entire amount of the requisite permit fee required by sections 4303.02 to 4303.231 or, in the case of a duplicate permit, section 4303.30 of the Revised Code, if the permit or duplicate permit is issued during the first six months of the year the permit or duplicate permit covers, or one-half of the amount of the requisite permit fee, if the permit or duplicate permit is issued during the last six months of the year the permit or duplicate permit covers. If the applicant fails to pay the applicable amount of that requisite permit fee within those thirty days, the division shall cancel the applicant’s application.

(B) Beginning October 1, 2015, the division of liquor control shall impose a ten per cent surcharge in addition to any fee prescribed pursuant to sections 4303.02 through 4303.232 for
each permit issuance, renewal, or transfer, and shall transmit that fee to the treasurer of state in accordance with section 113.08 of the Revised Code. The treasurer of state shall deposit the ten per cent surcharge to the credit of the indigent defense support fund established under section 120.08 of the Revised Code.

(C) All other fees shall be paid at the time and in the manner prescribed by the division. The liquor control commission may adopt rules requiring reports or returns for the purpose of determining the amounts of additional permit fees.

Sec. 4503.02. An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles; planning, constructing, maintaining, and repairing public roads, highways, and streets; maintaining and repairing bridges and viaducts; paying the counties' proportion of the cost and expenses of cooperating with the department of transportation in the planning, improvement, and construction of state highways; paying the counties' portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads; paying the principal, interest, and charges on county bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; for the purpose of providing motorcycle safety and education instruction; enabling municipal corporations to plan, construct, reconstruct, repave, widen, maintain, repair, clear, and clean public highways, roads, and streets; paying the principal, interest, and other charges on municipal bonds and other obligations issued pursuant to Chapter 133. of the Revised Code or incurred pursuant to section 5531.09 of the Revised Code for highway improvements; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to supplement revenue already available for such purposes; to pay the interest, principal, and charges on bonds and other obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution, and sections 5528.30 and 5528.31 of the Revised Code. Such tax shall be at the rates specified in sections 4503.04 and 4503.042 of the Revised Code. Under section 4503.04 of the Revised Code, the tax shall be paid to and collected by the registrar of motor vehicles or deputy registrar at the time of making application for registration. Under section 4503.042 of the Revised Code, the tax shall be paid to and collected by the registrar at the time and manner set forth by the registrar by rule.

Beginning October 1, 2015, the registrar of motor vehicles shall impose a one dollar surcharge in addition to any tax collected pursuant to sections 4503.04, 4503.042, 4503.07, 4503.10, 4503.12, 4503.181 and 4503.65 for each registration issuance, renewal, or transfer, and shall transmit that fee to the treasurer of state in accordance with section 113.08 of the Revised Code. The one dollar surcharge shall be paid for each year of a multi-year registration under section 4503.103. The treasurer of state shall deposit the one dollar surcharge to the credit of the indigent defense support fund established under section 120.08 of the Revised Code.