

## **Managing the High Cost of Indigent Defense**

By Pat Geissman

The State of Ohio allows counties, within certain parameters, to determine the most appropriate and cost effective method of providing defense counsel services to indigent clients. Medina County has historically utilized the “assigned counsel” method for this purpose, whereby the various courts determine indigent status and subsequently appoint private practice attorneys to represent the accused. However, from a budgetary perspective the continued, sole use of “assigned counsel” for indigent defense representation is becoming an unaffordable option in Medina County.

Over the last several years, especially at budget time, Medina County Commissioners have discussed the possibility of forming a Public Defenders Office. Last year our Finance Director brought statistics to us that indicated current caseload activity in Medina County put us at the threshold of saving considerable public dollars by implementing a Public Defenders Office. Total gross expenses for indigent services increased 126% from 1992 to 2001; total net expenses (after State reimbursement ) increased 92%. Importantly, as the State of Ohio’s reimbursement percentage of 50% continues to decrease due to budgetary cuts (currently reduced to 33%), the net cost of providing indigent defense costs at the county level is expected to increase by a greater degree than total gross expenditures. The greatest increases in assigned counsel expenses over the last ten years have occurred at the Municipal Court and Juvenile Court levels. We believe that the rapid escalation of expenses in Medina County for the defense of indigents through use of the assigned counsel method will continue fairly unabated over the next several years. Not only do we expect a continued increase in caseload numbers, but it is assumed that, in

the near future, we will be asked to consider an increase in the hourly rate of compensation for attorneys providing indigent defense services. We may also be asked to increase the maximum fees allowed for defending cases in Medina County.

Ten years ago, the average Medina County case defended by assigned Counsel cost 9% less than the statewide average cost. During CY00, in remarkable contrast, the average Medina County case cost 21% more than the statewide average cost. The greatest variance in statewide average cost vs. Medina County average cost in CY00 occurred in the defense of misdemeanor cases (typically heard at the municipal court level). Assigned counsel for misdemeanor cases cost 71% more to defend in Medina County than the statewide average.

With these statistics in mind, Medina County Commissioners are preparing to create a Public Defenders Commission for the purpose of implementing a Public Defender Service at the two municipal courts, with expectations of saving approximately \$100,000 annually. Over the past year the state Public Defenders Office has been very helpful with assistance and guidance as we gathered data and studied the option of a local Public Defenders Office. Commissioners also recently held a public hearing to get input from our local judges and the Bar Association. We firmly believe that Medina County's residents requiring public subsidized legal services will receive quality services from a well managed Public Defenders Office. All residents of Medina County will benefit from the associated cost savings.

Several other counties across the state are also opting for a Public Defenders Office as a better way of managing indigent defense costs. Medina is a medium size county; if organizing our own Public Defenders office saves us a considerable amount of public dollars, then collectively, and especially with larger counties establishing Public Defender offices, enough money should be saved to make a difference in the state funding we in turn will realize. If we can minimize

operational costs, then the state will have less to match and a stronger ability to reimburse us at a higher percentage than the 33% we are presently receiving.

#### HOW DID COUNTIES GET THE BURDEN OF INDIGENT DEFENSE COSTS?

In 1972 the U.S. Supreme Court mandated that the defense of indigent persons accused of crimes for which they could lose their liberty must be provided at public expense. This financial burden fell on the counties and in 1976 the state committed to funding 50% of these costs through making a reimbursement to counties. However, in 1979 the legislature eroded the partnership with the counties by adopting the concept of “proportional reduction” which provided that if the state is unable to reimburse counties at the full 50% then the counties are to receive a proportional reduction in reimbursement. Since 1992 reimbursement at a “proportional reduction” has occurred each year. Counties rely completely upon county general funds to pay for their 50% and to make up for the funding the state fails to provide.

A substantial portion of the funding the state appropriates for indigent defense reimbursement is subsidized from a state mandated court fee assessed in local courts and sent to the state. The recent State Budget Bill increased court fees from \$11 to \$15. The \$4 increase should generate an additional \$8 million each year, but this same budget when passed increased appropriations for indigent defense over the FY 03 level by only \$2.3 million. What happened to the other \$5.7 million? Commissioners across the state were hoping the State Budget Bill would have increased budget appropriations for indigent defense by the “full value” of the revenue received from the increase in the local court cost! That did not happen.

The provision of the constitutionally mandated defense of indigents is both an unfunded and “underfunded” mandate to counties. The General Assembly ought to reaffirm its commitment of partnership with its counties by reestablishing and fully funding its rate of reimbursement to

counties for the cost of indigent defense at 50% as originally legislated and to repeal the "proportional reduction" provision of the law!

Trying to help counties manage the high cost of indigent defense to some extent the General Assembly also included in the State Budget Bill a provision to get juvenile civil cases out of public defense by proposing to overturn an Ohio Supreme Court ruling that held all interested parties in any proceeding in the juvenile division have a statutory right to counsel if they are indigent. However, this statute was written at a time when juvenile courts primarily dealt with only delinquent and unruly juveniles. The jurisdiction of juvenile courts has been significantly expanded since the statute was enacted. The juvenile court now has jurisdiction over all issues arising from the birth of children out of wedlock which were formerly heard in the probate division of the court of Common Pleas. The Supreme Court held that the legislature, through R.C. 2151, has provided a statutory right to appointed counsel that expands beyond the federal and state constitutional requirements. This statute established an indigent's statutory right to the appointment of counsel in all domestic relations proceedings heard in the juvenile division including custody and visitation issues. Thus, the law treats parents who were never married better than parents who have married and face custody and visitation issues. Some have called this a "marriage penalty." The Office of the State Public Defender reported that approximately \$740,000 was spent over the last 12 months on these categories of cases. The governor, however, chose to veto this provision of the State Budget Bill and so it did not become law.

Some legislators have expressed concerns regarding the methods utilized by judges to determine indigence, and that we should be screening indigent clients more closely to decrease costs. In Medina County we believe the judges are adequately screening clients. We have looked at the possibility of adding staff members to assist in the screening process, but have

found that it is not cost effective. The administrative costs of trying to collect funds from these clients have been historically higher than the funds brought in.

Commissioners are concerned and frustrated with the spiraling costs of Indigent Defense and the continuing reduction in state reimbursements. It appears to us that the only way these concerns are going to be resolved is by taking whatever actions we can locally to better manage indigent defense costs while continuing to communicate our concerns to our State Legislators. Working together we can both do what we can to serve our communities and save public dollars.