

Rule Summary and Fiscal Analysis (Part A)**Ohio Public Defender Commission**

Agency Name

Division

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120-1-05

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

**Recoupment, contribution, partial payment, and marginally
indigent programs.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **111.15**

4. Statute(s) authorizing agency to adopt the rule: **120.03(B)**

5. Statute(s) the rule, as filed, amplifies or implements: **120.05(B)**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This filing is an update of the rule. The purpose of the update is clarify the rules approved by the Ohio Public Defender Commission in language that is more clear, accessible and hopefully lends itself to less confusion. The rules have not been updated since 2000, and both the Ohio Public Defender and the Ohio Public Defender Commission felt that revisions and updates were necessary both to bring our agency into compliance with the review process and to give better guidance to those who provide for representation of indigent defendants.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The rule will help to defray the costs of indigent defense even more than the previous one by mandating recoupment. In the existing rule the counties are permitted to recoup costs of indigent representation when the defendant's income is greater than 125% of the Federal Poverty Guidelines. The rule mandates the establishment of a recoupment program when a county provides a defendant with an attorney if the defendant has an income that is greater than 125% of the Federal Poverty Guidelines.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

The Ohio Public Defender Standards and Guidelines for Reimbursement are mailed to all county offices which deal with reimbursement. They are readily available in our office for anyone who wishes to review the document. The Ohio Public Defender Standards and Guidelines for Reimbursement can be mailed to anyone desiring to read it upon request, and by September 2009 it should be on line at our website.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

Not Applicable.

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

0

Not applicable.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

While some counties have recoupment programs most do not. The resources to establish such a program already exists through the same means of collection of fines and costs. The counties may actually stand to benefit from such a program, however it is difficult to measure what that gain would be because we have no control over the power to indict people or the amounts of indictments of people who exceed the income standards as set by our office and who are appointed counsel due to inability to retain counsel.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School
Districts

(b) Counties

(c) Townships

(d) Municipal
Corporations

No

Yes

No

No

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

There should be little to minimum cost of compliance with this rule because all of the resources to implement a recoupment program already exist at the county level. If anything some counties stand to gain from implementing a recoupment program and the fiscal effect on the counties should be a positive one of seeing increased revenues.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

There is no concrete way of coming up with a method for how much revenue this rule will bring to the counties.

(a) Personnel Costs

There should be no personnel cost to the counties associated with the rule change.

(b) New Equipment or Other Capital Costs

There should be no equipment or capital cost related to this rule.

(c) Operating Costs

There should be no increase in operating costs related to this rule.

(d) Any Indirect Central Service Costs

There should be little to no indirect costs related to this rule. The only cost will be in time to administer a recoupment program, but this rule should require no cost beyond that.

(e) Other Costs

There are no other foreseeable costs related to this rule.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

There should be no cost associated with this rule for the Ohio Public Defender. If there are any costs whatsoever for the counties to create and run a recoupment program, then the costs should be paid out of the money that the counties stand to gain by creating or enforcing such a program. Furthermore, counties are reimbursed by the state for up to fifty percent of the cost of indigent defense. In the 2008-2009 fiscal year counties were reimbursed 25% of their cost of representation for indigent defendants. In the 2009-2010 fiscal year counties will be reimbursed 35% of their cost of representing indigent defendants. This increase in reimbursement should help offset the cost of creating or enforcing a recoupment program.

7. Please provide a statement on the proposed rule's impact on economic development.

There should be little to no economic impact related as a result of this rule.