

Free public defense is no longer free in Ohio

February 2010



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Executive Summary

All Ohio residents who are living in poverty and need to apply for a public defender now have to pay a \$25 application fee before they can receive this “free” service. The fee is non-refundable, so defendants have to pay for it whether they are found innocent or guilty, and no matter how little money they may have.

This application fee is basically a tax on poor people that is imposed differently in each county, and it is way for the state to cut its budget while passing the costs for public defense on to people living in poverty.

Judges in each court in Ohio decide whether or not to waive the fee in each case. Some judges waive all application fees, while others never waive any. Most courts do charge the fee, forcing people to pay \$25 to fill out a form that says they are poor.

And while Ohio now charges this fee to “apply” for public defense, state law says that individuals cannot be charged for the actual public defender services. Ohio law calls for the state government to pay 50% of the cost of the public defense and for the counties to pay the other 50%. The law also states that the state legislature can reduce the percent it pays for the public defender offices if it is decided that the state does not have enough money. The state legislature has been reducing its share of the cost in recent years, and currently pays around 30% of the cost of the public defenders, while the counties are forced to pick up the remainder.

This new application fee is designed to help each county pay the increased amount for the public defender offices. This puts the judges and public defenders in the awkward position of supporting or opposing a fee that helps pay for the public defender offices but hurts the people that the offices are there for in the first place.

Quite simply, the state should not be forcing people living in poverty to pay for a service they cannot afford and the state is supposed to provide.

In America, all defendants are presumed innocent until proven guilty, but Ohio is charging people who have not been found guilty of anything \$25 to receive the legal counsel that they are entitled to receive.

Many people simply cannot afford the \$25 fee, and some may choose not to apply for a public defender because of it. Many Ohioans live on just a few hundred dollars each month, and some have an even smaller income. These individuals already can't pay their bills or pay for their basic necessities, and they certainly can't afford this \$25 fee. To them, the \$25 fee might as well cost \$1,000, as they have no way to raise the money.

The Ohio Revised Code states that legal counsel cannot be denied because an applicant has not paid the fee. Courts can, however, add the fee onto the court costs defendants may be required to pay when the legal proceedings are finished. Courts in Ohio are instructed to get the fees from all defendants at the time of application if possible.

The application fee has been in place in Ohio since 2005, but it took a little while to get fully implemented and for people to become aware of it. In Athens County, for example, signs went up in the Athens County Municipal Court in 2009 alerting people of the need to pay the fee.

According to figures from the Ohio Public Defender's Office, courts in Ohio have collected more than \$6.2 million in application fees since 2005, all from poor people who are forced to pay for an important legal service that is supposed to be free.

The number of application fees waived and collected varies from county to county

It's almost more important where you live in Ohio, rather than how much money you have, when it comes to having the fee waived

Since the state began charging the \$25 application fee for a public defender in 2005, Athens County courts have collected \$81,733 in these fees, according to figures from the Ohio Public Defender's Office. The county's collection rate of 91 percent is one of the highest in the state, and the state average is just 33 percent, according to the figures. The collection rate refers to the fees that were charged and then actually paid, and does not include any fees that were waived.

Since 2005, Athens County has had 5,537 applications for public defenders in the municipal, juvenile and common pleas courts, and the fee has been waived in just 16 cases, all of them in the Municipal Court, according to the figures from the Ohio Public Defender's Office.

Across the state, the figures show that some counties have waived the fees in the majority of their cases, while other counties have never waived the fees. And in southeast Ohio, the difference is striking when comparing the number of fees waived in each county.

- Hocking County, for example, has had 2,272 requests for public defenders since 2005, and the application fees were waived in 421 of the cases.
- Gallia County, meanwhile, had 3,485 requests for public defenders since 2005 and only waived the application fees for 2 of the cases.
- Vinton County has had 2,156 requests for public defenders and waived the fees in 357 cases.
- Pike County has had 1,090 requests for public defenders since 2005 and has not waived any of the fees at all.

The differences from county to county are also significant when comparing some of the more densely populated counties in Ohio.

- Lucas County, for example, has had 105,347 requests for public defenders since 2005 and waived the fees in 74,106 of the cases.
- Hamilton County, meanwhile, has had 144,199 requests for public defenders and waived the fees in 8,217 of the cases.
- Statewide, Ohio has had 988,157 requests for public defenders since 2005 and the fees have been waived in 208,430 of the cases.

Figures provided by the Ohio Public Defender's Office for all Ohio counties are included at the end of this report.

A few reasons why this new tax on poor people needs to be eliminated

The new fee is designed to help reimburse counties for the some of the costs that have been passed on to them by the state. Basically, it's a way for the state to reduce the amount it pays for public defense in Ohio, and force people living in poverty to pay the bill.

It's really just another tax on poor people that was put into place in order to save money in the state budget.

It would make much more sense for the state to pay the percentage that state law requires it to pay, and to not charge state residents for the free legal defense that is supposed to be available to them.

Some people may argue that the \$25 fee is not too high, and that maybe poor people should be paying for part of their legal defense. This argument has several problems:

- First of all, people living in poverty are already paying their share for the public defense, as they pay taxes just like the rest of the state residents. The state government provides services and assistance programs to people of all income levels, and this is another one of those programs. This program is extremely important, as it provides the legal counsel state residents may desperately need.
- When individuals apply for a public defender, they have not been found guilty of anything. Americans are still presumed innocent at the time they are charged with crimes, but the state of Ohio is charging this fee and acting as if the people accused of crimes are guilty.
- Many people cannot afford the \$25 fee and are forced to choose between finding a way to come up with the money or defending themselves in court. No statistics are available to show if the number of people who represent themselves in court has changed since the fee went into place, but we are concerned that more people may be choosing to go this route so that they can avoid the \$25 fee.
- Now that the \$25 application fee is in place, it will be easier for the state to increase the fee in future years and make it even harder on poor people. Several other states also have the application fees in place, and many set their fees higher than \$25.
- The \$25 fee can be added on to other fines and court costs that people going to court already have to pay. It's another fee that makes it harder for people to get back on their feet.
- The state is also creating other fees for people who have been charged with or convicted of crimes. In October of 2009, for example, Ohio started charging a \$25 "surcharge" when individuals post bail to get out of jail. This surcharge, which is basically a new tax on people who are in jail, is added to the amount of bail and can make it even tougher for someone to raise enough money to post bail and get out of jail.

Additional concerns over the \$25 fee and how judges decide whether to waive it or not

In addition to the main problem of charging people \$25 to prove they are poor, the application fee also has several other troubling aspects:

- One problem is that there is no set process for how an individual applies to have the fee waived. In some courts, the judges look over the applications for public defense and waive the fees, while in others the public defenders or the defendants ask to have the fee waived.
- No records are kept of how many times people ask to have the fee waived and are denied.
- There are no guidelines for when the fee should be waived. The decision is left to the judges, who ruled very differently on this issue from one county to the next.
- In some counties, the judges have not granted any fee waivers at all since the application fee went into place in 2005. In other counties, a large number of fee waivers are granted, sometimes in more than half of all cases involving public defenders. The defendants' financial situations are no different from one county to the next, it's just that the judges all look at the cases differently.
- Counties are short on funds and now have to rely on the money raised by the fees. Similarly, the public defenders offices are also short on money and rely on the funds raised by the fees. The judges should not be placed in a position where they are choosing between making the defendants pay another fee that they may not be able to afford, or waiving a fee that the county and the public defenders offices rely on. It is a very tough position for the public defenders, judges and the county governments all to be in, all because the state created this fee so that it could lessen the amount it pays for public defense and pass on the cost to poor people.
- Of course, it's an even tougher position for the defendants to be in when they have no money but suddenly have to come up with \$25 in order to receive the legal defense that is supposed to be there to assist them in court and help to keep them out of jail

County	# Of Cases	Fees Waived	Percent Waived	Total Collected
All of Ohio	988,157	208,430	21%	\$6,270,772
Adams	1,994	76	4%	\$23,133
Allen	9,545	1,680	18%	\$100,710
Ashland	2,240	100	4%	\$29,799
Ashtabula	8,919	280	3%	\$113,634
Athens	5,537	16	0.3%	\$81,784
Auglaize	2,507	134	5%	\$23,746
Belmont	5,544	427	8%	\$90,234
Brown	970	97	10%	\$6,367
Butler	81,827	3,363	4%	\$443,871
Carroll	3,255	52	2%	\$36,466
Champaign	3,956	121	3%	\$47,531
Clark	9,431	95	1%	\$136,779
Clermont	20,275	6,914	34%	\$187,635
Clinton	<i>Incomplete</i>	<i>figures</i>	<i>shown</i>	\$19,833
Columbiana	6,652	2,695	41%	\$38,025
Coshocton	3,042	958	31%	\$30,088
Crawford	621	19	3%	\$9,892
Cuyahoga	72,912	22,589	31%	\$351,575
Darke	1,328	108	8%	\$15,974
Defiance	2,172	1,104	51%	\$19,393
Delaware	3,458	26	0.1%	\$18,451
Erie	7,337	2,126	29%	\$90,298
Fairfield	3,616	476	13%	\$32,439
Fayette	1,979	87	4%	\$19,453
Franklin	111,424	18,705	17%	\$354,732
Fulton	2,139	257	12%	\$13,563
Gallia	3,485	2	0.1%	\$46,154
Geauga	1,394	715	51%	\$7,494
Greene	9,942	318	3%	\$129,444
Guernsey	4,792	2,357	49%	\$53,107
Hamilton	144,199	8,217	6%	\$368,386
Hancock	5,909	246	4%	\$67,209
Hardin	1,744	2	0.1%	\$23,607
Harrison	159	0	0%	\$5,133
Henry	672	34	5%	\$8,340
Highland	3,120	615	20%	\$29,942
Hocking	2,272	421	19%	\$17,314
Holmes	2,224	277	12%	\$36,967
Huron	3,751	880	23%	\$36,962
Jackson	3,510	25	1%	\$53,257
Jefferson	3,586	154	4%	\$41,418
Knox	2,490	1,848	74%	\$5,933
Lake	8,602	779	9%	\$145,893

Lawrence	7,563	3,315	44%	\$36,794
Licking	5,467	111	2%	\$53,034
Logan	2,625	418	16%	\$37,623
Lorain	9,786	1,273	13%	\$63,954
Lucas	105,347	74,106	70%	\$181,517
Madison	3,134	96	3%	\$35,528
Mahoning	18,358	1,713	9%	\$182,349
Marion	1,430	4	0.3%	\$21,837
Medina	8,670	1,352	16%	4107,493
Meigs	1,287	2	0.2%	\$32,125
Mercer	2,094	212	10%	\$14,866
Miami	5,995	538	9%	\$58,471
Monroe	1,464	85	6%	\$14,955
Montgomery	56,962	10,795	19%	\$480,603
Morgan	534	67	13%	\$10,322
Morrow	1,267	168	13%	\$19,430
Muskingum	4,828	385	8%	\$48,562
Noble	429	16	4%	\$8,612
Ottawa	2,425	128	5%	\$35,076
Paulding	812	248	31%	\$6,996
Perry	1,112	105	9%	\$14,921
Pickaway	2,774	0	0%	\$21,763
Pike	1,090	0	0%	\$9,556
Portage	22,005	4,648	21%	\$147,456
Preble	1,782	133	7%	\$29,945
Putnam	1,266	22	2%	\$8,178
Richland	14,389	1,705	12%	%147,382
Ross	15,618	706	5%	\$109,944
Sandusky	3,473	1,331	38%	\$32,360
Scioto	13,997	7,751	54%	\$10,877
Seneca	4,075	2,276	56%	\$18,222
Shelby	7,263	1,585	22%	\$74,245
Stark	8,817	821	9%	\$91,386
Summit	9,574	0	0%	\$66,008
Trumbull	16,934	2,602	15%	\$134,442
Tuscarawas	8,009	802	10%	\$86,744
Union	1,761	38	2%	\$20,128
Van Wert	1,639	360	22%	\$6,530
Vinton	2,156	357	17%	\$23,648
Warren	7,195	2,980	41%	\$50,587
Washington	6,321	91	1%	\$96,308
Wayne	6,916	787	11%	\$74,766
Williams	2,007	1,905	95%	\$1,360
Wood	9,384	96	1%	\$118,801
Wyandot	1,099	301	27%	\$12,998

Figures provided by the Ohio Public Defender's Office

Report compiled by the Athens County Department of Job and Family Services. Figures on public defender application fees in each Ohio county provided by the Ohio Public Defender's Office.

For more information, call Athens County Job and Family Services Community Relations Coordinator Nick Claussen at 740-797-2523 or send an e-mail to clausn@odjfs.state.oh.us