

**OPINION NO. 82-098****Syllabus:**

The Ohio Public Defender Commission must reimburse counties for fifty percent of the cost of providing representation through a county or joint county public defender's office or county appointed counsel system to an indigent defendant in contempt proceedings for nonpayment of child support, provided that the request for reimbursement is timely received and comports with the standards and guidelines established by the State Public Defender pursuant to R.C. 120.04(B)(7), (8) and (9) and R.C. 120.34.

**To: Randall M. Dana, Ohio Public Defender, Columbus, Ohio**  
**By: William J. Brown, Attorney General, November 19, 1982**

I have before me your request for an opinion in response to the following question:

When an indigent defendant faces contempt charges for non-payment of child support and the state has to provide him or her counsel at its own expense, must the Ohio Public Defender Commission pursuant to Chapter 120 of the Ohio Revised Code reimburse counties in this state for 50% of the cost of that representation?

Your question has arisen as a result of several recent decisions in which courts have held that, under the sixth and fourteenth amendments to the United States Constitution, a party facing contempt charges for nonpayment of court-ordered child support must be informed of his right to counsel, and, if indigent, his right to appointed counsel for such proceedings. These courts have declared that the civil or criminal nature of the contempt proceedings is not determinative of this right to counsel. Rather, the dispositive inquiry is whether, if the defendant loses the litigation, he may suffer a loss of his physical liberty. See, e.g., Johnson v. Zurz, No. C-82-1534A, pp. 2-3 (U.S. Dist. Ct., N.D. Ohio, June 15, 1982) (temporary restraining order); Young v. Whitworth, No. C-1-81-619, pp. 7-9 (U.S. Dist. Ct., S.D. Ohio, Sept. 25, 1981) (memorandum denying motion to dismiss habeas corpus petition); Schock v. Sheppard, No. CAL-82-157, pp. 6-7 (Ct. App. Lucas County, Ohio, Oct. 1, 1982). A defendant charged with contempt for nonpayment of child support, if found guilty, may be sentenced to jail. See R.C. 2705.02(A) (A person guilty of disobedience of, or resistance to a lawful order or judgment of a court may be punished as for a contempt.); R.C. 2705.05 (A person found guilty of a contempt charge may be fined not more than five hundred dollars or imprisoned not more than ten days, or both.); R.C. 2705.06 ("When the contempt consists of the omission to do an act which the accused yet can perform, he may be imprisoned until he performs it."). Such a defendant may, therefore, be deprived of his physical liberty as the result of these contempt proceedings, and, accordingly, state and federal courts have held that an indigent defendant has the right to appointed counsel for the proceedings.

The systems which provide for appointed counsel for indigents in Ohio are established under R.C. Chapter 120. The statutes require county or joint county public defenders to represent certain indigent persons by providing, in pertinent part, as follows:

The county [joint county] public defender shall represent, when designated by the court, juveniles, other than juveniles charged with the violation of a municipal ordinance, and all other persons, except persons charged with the violation of a municipal ordinance and persons whose competency is being, or is to be, determined by the probate court, in any proceeding the outcome of which could result in the loss of liberty. (Emphasis added.)

R.C. 120.16(A)(3), 120.26(A)(3).

In lieu of using a county or joint county public defender, a board of county commissioners may, by resolution, establish an appointed counsel system to provide representation for indigent persons in any proceeding set forth under R.C. 120.16(A). R.C. 120.33. Thus, a court may designate a county or joint county public defender, or private counsel, either selected by the indigent person or appointed by the court, to represent an indigent defendant in any proceeding that could result in the loss of such defendant's liberty. Since a defendant found guilty of contempt for nonpayment of child support may be sentenced to jail, a court may designate a county or joint county public defender or other appointed counsel to represent an indigent defendant in such contempt proceedings.

When representation has been provided to indigent defendants under these systems, the statutes provide a method for reimbursement of part of the costs to the county or counties involved. The method for partial reimbursement of the costs under county appointed counsel systems is set forth under R.C. 120.33(D) which provides, in pertinent part, as follows:

The county auditor shall draw his warrant on the county treasurer for the payment of counsel in the amount fixed by the court, plus the expenses the court fixes and certifies to the auditor. The county auditor shall report periodically, but not less than annually, to the board of county commissioners the amounts paid out pursuant to the approval of the court. The county commissioners, after review and approval of the auditor's report, may then certify it to the state public defender for reimbursement. If a request for the reimbursement of the cost of counsel in any case is not received by the state public defender within ninety days after the end of the calendar month in which the case is finally disposed of by the court, the state public defender shall not pay the requested reimbursement. The state public defender shall also review the report and, in accordance with the standards, guidelines, and maximums established pursuant to divisions (B)(7) and (8) of section 120.04 of the Revised Code, prepare a voucher for fifty per cent of the total cost of each county appointed counsel system in the period of time covered by the certified report. Upon presentation of the voucher to the auditor of state, the auditor, if satisfied as to the correctness of the voucher, shall issue a warrant on the treasurer of state, payable to the order of the county commissioners, for the amount of the voucher. . . . (Emphasis added.)

Thus, the state may be required to reimburse a board of county commissioners for fifty percent of the fees, costs, and expenses fixed by the court in proceedings in which county appointed counsel has represented an indigent defendant.

In a similar manner, provision is made for partial reimbursement of the costs of operation of county and joint county public defender's offices. The pertinent statutes require maintenance of financial records of all cases handled, development of records concerning the operating costs of each county or joint county public defender's office, and reporting of this data to their respective public defender commissions and boards or joint boards of county commissioners. See R.C. 120.14(C)(2), 120.15(B)(2), 120.24(C)(2), 120.25(B)(2). Following audit and review, a financial report must be certified to the state public defender within sixty days after the end of the calendar month in which the expenditure is incurred. The state public defender, after review of the report, must prepare a voucher for fifty percent of the total cost<sup>1</sup> of each county or joint county public defender's office for the period of time covered by the report. Upon presentation of such a voucher to the auditor of state, a warrant, drawn on the treasurer of state and payable to the order of the appropriate board or joint board of county commissioners, shall be

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<sup>1</sup>R.C. 120.18(A) and 120.28(A) define the term "total cost" to mean "total expenses minus any funds received by the county public defender commission [or joint county public defender commission] pursuant to a contract, except a contract entered into with a municipal corporation pursuant to . . . [R.C. 120.14(E) or R.C. 120.24(E)], gift or grant."

issued for the amount of such voucher. R.C. 120.18(A), 120.28(A). Thus, counties may be reimbursed for fifty percent of the total cost of operation of each county or joint county public defender's office or appointed counsel system.

I note, however, that reimbursements to counties pursuant to R.C. 120.18, 120.28 and 120.33 may be limited under R.C. 120.04(B)(7), (8) and (9) which authorize the state public defender to establish standards and guidelines for such reimbursements, as well as maximum amounts that the state will reimburse the counties for each specific type of legal service performed by a county or joint county public defender office or by any attorney appointed pursuant to an appointed counsel system. Accordingly, the state public defender may fix a maximum amount for which the state will reimburse a county for representation provided to an indigent defendant for contempt proceedings for nonpayment of child support through a county or joint county public defender's office or other appointed counsel system.

Moreover, the total amount of money paid to all counties in any fiscal year pursuant to R.C. 120.18, 120.28 and 120.33 may not exceed the total amount of money appropriated by the General Assembly for the reimbursement of the county and joint county public defender offices, and the county appointed counsel systems for that fiscal year. R.C. 120.34. If appropriated funds are insufficient to pay fifty percent of the total costs of operation of all the offices and systems, the amount paid to each county is to be proportionately reduced so that each county is paid an equal percentage of the total cost of operation of its county public defender, joint county public defender, or county appointed counsel systems. Id.

Based upon the foregoing, it is my opinion, and you are advised, that the Ohio Public Defender Commission must reimburse counties for fifty percent of the cost of providing representation through a county or joint county public defender's office or county appointed counsel system to an indigent defendant in contempt proceedings for nonpayment of child support, provided that the request for reimbursement is timely received and comports with the standards and guidelines established by the State Public Defender pursuant to R.C. 120.04(B)(7), (8) and (9) and R.C. 120.34.