



Allegheny County Council

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Legislation Text

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An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending the Allegheny County Code of Ordinances, Division 4, entitled "Finances," is hereby amended and supplemented by the addition of a new Chapter 492, entitled "Criminal Justice Funding Parity" in order to provide for adequate and fair representation of indigent defendants charged with criminal offenses within the County.

Whereas, in 1963, the United States Supreme Court issued its landmark opinion in *Gideon v. Wainwright*, 372 U.S. 335 (1963); and

Whereas, Justice Hugo Black, writing for the unanimous majority, expressly recognized that the fact "[t]hat government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries."; and

Whereas, Justice Black further noted that America's criminal justice system is "adversarial," meaning that the state assumes and uses its resources to establish the defendant's guilt before the defendant is proven guilty in a court of law; and

Whereas, the Court ultimately concluded that, because "even the intelligent and educated layman has small and sometimes no skill in the science of law," the presence of defense counsel is "fundamental and essential to fair trials" in the United States.; and

Whereas, the Supreme Court continued to extend the right to counsel to include even certain non-judicial proceedings such as police interrogations (See, *Miranda v. Arizona*, 384 U.S. 436 (1966)); and

Whereas, several years after *Gideon*, the Supreme Court expressly extended the right of counsel to include any defendant charged with a crime punishable by a term of imprisonment (See, *Argersinger v. Hamlin*, 407 U.S. 25 (1973), holding that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."; and

Whereas, while the fundamental nature of the right to counsel has been repeatedly reaffirmed by Federal and State courts over the decades since *Gideon* and its progeny were decided, Allegheny County has had a difficult history in providing adequate resources for its Office of the Public Defender; and

Whereas, this history is perhaps best demonstrated by a consent decree entered into by the County in *Doyle, et. al. v. Allegheny County Salary Board, et. al.* (Civil Docket No. GD-96-13606) in 1998, which, *inter alia*, provided for significant increases to the number of attorneys, support staff, and investigatory staff within the Office of the Public Defender, increases in funding to the Office of the Public Defender, implementation of officewide practice and training standards, appropriate and adequate assignment of attorneys and support staff to the various functions undertaken by the Office, and annual reporting of staffing levels, caseloads, and other information in order to verify compliance; and

Whereas, despite the existence of this consent decree, as recently as June of 2003, the Plaintiffs filed the attached Motion requesting either Court-directed compliance with the decree or that the Defendants be held

in contempt, alleging widespread failures to comply with the consent decree; and

Whereas, despite verbal and written commitments by the County to increase funding to the Office of the Public Defender pursuant to the *Doyle* consent decree, as recently as 2003-04, staff in the Office of the Public Defender was repeatedly required to undertake actions like asking to borrow paper from other departments to prepare necessary materials for the office, due to lack of funding for supplies; and

Whereas, the litigation in *Doyle* ultimately resulted in the continuation of the consent decree through December 31, 2005; and

Whereas, despite this history, allegations were made to Council's Committee on Budget and Finance that the County was not bargaining in good faith with the United Steelworkers, the union which represents attorney employees within the Office of the Public Defender, as recently as the autumn of 2022; and

Whereas, although the union-represented attorneys within the Office of the Public Defender were ultimately ratified a new collective bargaining agreement in December of 2022, an experienced Assistant Public Defender offering public comment during the Council's December 6, 2022 regular meeting indicated that, while he regarded the new agreement as a positive step, he did have concerns about the overall 2023 budget for the Office of the Public Defender being inadequate to meet its needs, should funding that had been added during the committee process be removed by the full Council: “[b]ut we are also not just union members, we are members of this office, and we care about some of the advances that we want to make that have been proposed and was [sic] presented to County Council when that budget was submitted. We want to hire more investigators. We want to hire more social workers. We have plans for the outcome - improving the outcomes for not only our ability to represent our clients, but the people we represent as well, and hopefully reduce recidivism rates. Without the money in the budget, I am afraid we might not be able to achieve those goals as well. So we ask that you consider keeping the amendments as they stand so that our office can operate its budget fairly.”; and

Whereas, these comments, offered by a trial attorney with nearly 25 years of experience in the Office of the Public Defender, touch upon both the fundamental constitutional right to counsel and Allegheny County's ability to competently and adequately provide that representation; and

Whereas, these comments also demonstrate a desire to provide representation in a holistic fashion, such that the entire criminal justice system benefits through reduced recidivism, reduced jail crowding, and lower caseloads for defense attorneys, prosecutors, and the courts; and

Whereas, in the judgement of Council, this approach both proactively attempts to mitigate issues that have plagued the County's criminal justice system for decades, while simultaneously ensuring that the County provides representation to indigent criminal defendants in a fashion that preserves their fundamental constitutional rights; and

Whereas, it is further the judgment of Council that funding parity between the Office of the Public Defender and the Office of the District Attorney is a necessary condition of adequate defense representation, as differential funding of the prosecutorial and defense functions will necessarily result in a competitive advantage for one side or the other in the criminal justice process; and

Whereas, it is accordingly the desire of Council to codify the principle of funding parity between the Office of the Public Defender and the Office of the District Attorney;

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. Incorporation of the Preamble.

The recitations contained within the Preamble to this Ordinance are hereby incorporated by reference herein.

SECTION 2. Amendment of the Allegheny County Code of Ordinances.

The Allegheny County Code of Ordinances, Division 4, entitled “Finances,” is hereby amended and supplemented by the addition of a new Chapter 492, entitled “Criminal Justice Funding Parity” and comprised as follows:

**Chapter 492
Criminal Justice Funding Parity**

§491-01. Appropriations Relating to the Offices of the Public Defender and District Attorney.

- A. Beginning in Fiscal Year 2024 and in each fiscal year thereafter, Allegheny County Council shall, to the greatest extent practicable in the course of adopting each annual operating and capital budget, appropriate sums for the operations of the Office of the Public Defender and the Office of the District Attorney that afford each office equal ability to prosecute individuals charged with criminal offenses within Allegheny County and to defend indigent persons so charged.
- B. In considering annual appropriations under the terms of this Section, when conducting annual public hearings on the County’s budgets as provided for in §5-801.05 of the Administrative Code of Allegheny County, request and receive verbal and/or written testimony from both the Allegheny County District Attorney (or his or her designee) and the Chief Public Defender (or equivalent position) regarding their respective office’s functions and needs for attorneys, support staff, investigatory staff, expert witnesses, training, supplies, travel, office furnishings, office space, and any other factor(s) relating to undertaking such office’s functions.
- C. In formulating annual budgets for the Offices of the Public Defender and District Attorney, Council shall not knowingly appropriate funds for office functions that disproportionately work to the advantage or disadvantage of either office in the performance of its duties.

§491-02. Review.

Beginning in 2024 and in every year thereafter, Allegheny County Council shall, in the course of adopting each annual operating budget, review and evaluate the uses to which the Offices of the Public Defender and District Attorney have put prior years’ appropriations, and the fiscal impact of such appropriations on the County.

SECTION 3. - Effective Date.

The provisions of this Ordinance shall enter into effect on the date of final approval.

SECTION 4. - Severability.

If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

SECTION 5. - Repealer.

Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.