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Testimony of Susan O. Storey, Chief Public Defender
APPROPRIATIONS COMMITTEE
Hearing on Projected Deficiency of State Agencies
November 15, 2010

Projected Deficiency Special Public Defender Non-Contractual Account

Original Appropriation	**5,000,000**
Projected Expenditures	**5,991,000**
Deficiency	**(991,000)**

Our appropriation for this year was greatly reduced from previous years to $5M, compared to appropriations of $5.8M in the previous 3 years. Our expenditures have been fairly level averaging $5.8M in those 3 years.

In FY10 our expenditures remained at this same level of $5.8M. In addition to all the other factors stated in our deficiency letter of October 22, 2010 to OPM, an influx of bills received in the latter part of June 2010, resulted in a carryover of $546,000 in unpaid bills into FY11, further contributing to this year's deficiency.

I have had to address excessive caseloads as well as other circumstances beyond our control that have also contributed to the deficiency in this account. As Chief Public Defender, it is my statutory and ethical responsibility to ensure that indigent persons in Connecticut charged with crimes have the assistance of competent counsel. Caseload projections for FY2011 indicate that 15 GA public defender offices will reach or exceed Public Defender Commission caseload goals of 500 new cases per attorney per year. The nature of the workloads in the GA courts has also become far more complex in the decade since these goals were set in accordance with the settlement agreement in the class action lawsuit *Rivera v. Rowland, et al.* The creation of multiple specialty dockets, legislative enactment of new felony crimes, and enhanced criminal penalties for existing crimes, has dramatically changed the GA court criminal practice. An increase in staff, whether permanent or non- permanent is required in order to guarantee constitutionally adequate representation for indigent defendants.

Most recently, I have had to place additional staff in the Hartford Community Court. The public defender caseload in this court grew to approximately 1500 cases for a single attorney last year, three times that authorized by the Public Defender Commission. Even with additional staff, public defenders in that court will still maintain caseloads of 750 cases per attorney, 250 cases per attorney per year greater than caseload guidelines. Additionally, Hartford GA#14 requires more staff due to the transfer of staff to HCC, caseload overload in that court, and coverage for maternity and long-term medical leaves of absence. It will be necessary to employ two full time per diem attorneys to make sure that the court is adequately covered. Three additional per diem lawyers are also needed in GA#2 Bridgeport, and one additional per diem lawyer is needed in New Britain GA#15 for reasons similar to those outlined for GA#14 Hartford. Several other GA offices have had per diem assistance for some time.

Without additional permanent positions, there are two possible alternatives for me to fulfill my ethical obligation as the head of this Agency. First, I could instruct GA field office supervisors to assign cases to special public defenders when their lawyers have caseloads that exceed Commission guidelines. The second alternative, and the more economical solution to being understaffed, is to hire per diem attorneys, paid at a daily rate, to fill essential roles in these courts with funds from our non-contractual SPD account. Although hiring per diems will contribute to the deficiency in that account; the alternative of sending cases out to special public defenders on a case by case basis would be much more expensive.

Also impacting this account are the significant SPD legal fees resulting from eliminating the year long waiting list for attorney appointments in habeas corpus cases and the considerable legal fees for SPD representation in the pending capital death penalty case, *State v. Joshua Komisarjevsky*. Also, as of November 1, 2010 there are 19 capital cases pending trial. Thirteen of these cases are currently charged as capital death penalty cases and 6 cases are categorized as capital non-death cases. Nine of the cases are represented by the Capital Unit, 4 by teams of public defenders in field offices, and 6 defendants are represented by special public defenders. Fees generated by these special public defenders as well as those from special public defenders representing death row clients in the racial disparity habeas litigation are essential for the representation of these clients and beyond the control of this Office.

Deficiency in Expert Witness Accounts

Original Appropriation	**1,535,646 less holdback (4,031)**
Adjusted Appropriation	**1,531,615**
Projected Expenditures	**2,329,615**
Deficiency	**(798,000)**

During the past 3 years, expenditures in this account have remained fairly level with expenditures in FY08 and FY09 at 1.9M and 2M in FY10 . In FY11, we are projecting expenditures of 2.3M due to a number of high profile capital cases currently or predicted to be on trial.

Funds from this account are used to retain the services of outside professionals needed to prepare and present adequate defense representation. Forensic, medical, psychiatric and other experts provide constitutionally required consultation and testimony in criminal cases. The use of experts in cases of misidentification, false confessions, DNA, and other forensic issues has also increased dramatically with court rulings that allow jurors to consider such testimony, and with advances in the field of forensic science. Expenditures in this account are projected to increase in 2011. These increases are attributable to the greater need for such experts in cases where clients are charged with serious felonies, persistent offender status and capital cases, especially in those cases where the death penalty is pursued. There are also increased numbers of clients presenting with psychiatric and substance abuse problems; and the attendant increased cost of retaining qualified experts to provide consultation and in court testimony. In addition, hourly fees charged by experts utilized by both staff public defenders and special public defenders have increased.

Expenditures in the Expert Witness Account are also expected to increase as a result of the increase in overall caseloads, and the significant increased costs of defending serious felony and death penalty cases at all stages. Overall, public defender cases statewide increased from 90,707 in FY 2008-09 to 92,144 in FY 2009-10. Also impacting the Expert Witness Account is the increase in the overall percentage of Judicial District (major felony) cases handled by public defenders. In FY 2009-10 the percentage rose to 87.35% as compared to FY 2008-09 84.65%, and FY 2007-08 82.99%. The percentage is actually much higher in some JD jurisdictions. Individual GA public defender offices also saw increases in overall caseloads from 3%-6%. The GA public defender offices continue to retain 97% of major felony cases.

Expert expenditures increased in FY2010 by 10% over FY2009 largely due to the number of capital felony trials in which the case proceeded to a penalty phase hearing on imposition of the death penalty. Capital cases in particular, because of their seriousness and complexity, require the service of numerous forensic, mitigation, and psychiatric professionals in order to provide the defendant with constitutionally adequate defense representation. Thirty-four (34) capital cases in various stages of representation were handled in FY2010, of which 15 were death penalty cases.

Only one of these cases had or currently has privately retained counsel. The United States Supreme Court requires particularly high standards for effective assistance of counsel in death penalty cases, especially in the presentation of mitigation evidence in the penalty phase, and therefore these cases are extraordinarily expensive and place inordinate demands on all aspects of this Agency's budget and personnel.

As clearly illustrated by the recent capital death penalty trial of Cheshire defendant, Steven Hayes, in New Haven, these cases are an enormous responsibility and exceedingly costly for all agencies involved. If it is later found by a reviewing court that the defense lawyers did not perform with utmost diligence in investigating or presenting mitigation evidence, it is possible that the death sentence will be overturned. Also this year, preparation is underway for the trial of Steven Hayes' co-defendant, Joshua Komisarjevsky. Currently on trial in Bridgeport is the capital death penalty trial, State v. Christopher DiMeo, to be followed by the retrial of capital defendant Richard Rozkowski, whose prior death sentence was vacated. As stated above, there are currently 19 capital cases pending trial where experts will be needed for the guilt phase, penalty phase or both.

These expenses are also expected to mount further in the next biennium due to an increase in both the number of appeals and habeas litigation in cases where a death sentence was imposed. Further expenditures and litigation involving habeas corpus petitions and the findings of the Racial Disparity Study are expected. This Agency is responsible for providing counsel for the eighteen (18) litigants who are either sentenced to death or have pending capital felony prosecutions in the *Racial Disparity in Death Penalty Cases* litigation. Expenditures continue to mount as the litigation continues over the findings of the defense expert study, and as more death eligible clients join the litigation.

OTHER EXPENSES ACCOUNT (OE)

Orig. Appropriation	**1,466,812, less holdback 127,447=**
Adj. Appropriation	**1,339,365**
Projected Expenditures	**1,596,365**
Deficiency from Adj. Appropriation	**(257,000)**

Although we have been monitoring these expenditures quite closely, we find that the current level of expenditures is necessary in order to provide the services required to operate our agency and serve our clients. Increased overall caseloads, including capital, appellate and habeas cases, force increased expenditures in many of these line items, i.e., printing of legal briefs, increased volume of postage, record storage, mileage reimbursement etc.

Efforts have been made to reduce the expenses on office supplies by seeking new vendors which provided better prices. We renegotiated the contract with the Connecticut Law Tribune to reduce the annual subscription rate. We have cut back on subscriptions and books. We are only purchasing essential business supplies. This Office has also complied with the Governor's

directive to cease publishing hard copies of the Annual Report and Agency newsletter. Both are now available on-line.

Our expenditures in this account have remained fairly level at 1.5M since FY 09 and FY10, with expenditures projected at the same level in FY11.

The most significant OE issues are the following line items:

Mileage Reimbursement $145,486 FY 2010

Automated Legal Research (Lexis/JIS) $264,794 FY 2010
Due to increased caseloads, our usage of automated research services has increased.

Regular Postage $61,385 FY 2010

Legal Briefs $54,195 FY 2010

Storage Expense $77,288 FY 2010
In addition to storage rates for all our 40 or more field offices, we also have additional costs for retrieval of files, cost of shipping files and cost of picking up files. Many of our larger active offices such as the Appellate, Habeas, JD Courts, and the Capital Defense Unit may have to retrieve files for cases after trial and that are on appeal many years after trial. Storage of such files is a necessity in order to comply with state and court retention policies.

Temporary Services $256,035 FY 2010
The increase can be attributed to the cost of temporary employees hired to provide services in the absence of permanent employees, such as, clericals, investigators, and social workers, due to illness, leaves of absences, or retirement.