



*Office of Chief Public Defender
State of Connecticut*

30 TRINITY STREET, 4TH FLOOR
HARTFORD, CONNECTICUT 06106
TEL (860)509-6429
FAX (860)-509-6499
susan.storey@jud.ct.gov

ATTORNEY SUSAN O. STOREY
CHIEF PUBLIC DEFENDER

**Testimony of Susan O. Storey, Chief Public Defender
APPROPRIATIONS COMMITTEE
Hearing on Projected Deficiency of State Agencies
April 11, 2011**

Projected Deficiency Special Public Defender Non-Contractual Account

Projected Deficiency (1.5M)

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.

Furthermore, circumstances beyond the control of this Agency have contributed to the deficiency in this account. As Chief Public Defender, it is my statutory and ethical responsibility to ensure that indigent children and adults charged with crimes in Connecticut have the assistance of competent defense counsel. Currently, 11 GA public defender offices have caseloads that meet or exceed Public Defender Commission caseload goals of 450-500 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.*. Legislative creation of additional intensive domestic violence dockets without additional resources, legislative enactment of new felony crimes, and enhanced

criminal penalties for existing crimes, have dramatically increased the GA court criminal practice workload for individual attorneys.

Without additional permanent positions, there are two possible remedies to provide required services. First, GA field office supervisors could assign cases to special public defenders when their public defender staff attorneys have caseloads that exceed Commission guidelines. The second alternative, the hiring of per diem attorneys at a daily long term rate, is substantially the more economical solution to being understaffed. While hiring per diem attorneys at approximately \$225 per day does contribute to the deficiency in that account, it is essential to do so. The alternative of sending cases out to special public defenders on a case by case contract (misdemeanors \$350) or hourly basis (\$50 misdemeanors- \$75 felonies per hour case) for caseload relief is much more expensive.

Also impacting this account are the significant SPD legal fees resulting from this Agency's continued efforts to reduce the waiting list for attorney appointments in habeas corpus cases and the considerable legal fees for SPD representation in pending capital death penalty cases, including *State v. Joshua Komisarjevsky*. Also, as of April 1, 2011 there were 18 capital cases pending trial. Ten of these cases are currently charged as capital death penalty cases and 8 cases are categorized as capital non-death cases. Fees generated by special public defenders representing capital clients at trial, appeal, state habeas and the consolidated racial disparity habeas litigation are largely beyond the control of this Office and essential for constitutionally mandated services. Per Commission policy and ABA Criminal Justice Standards in Death Penalty Cases, two attorneys are required to be appointed for each phase of a death penalty trial, appeal, or habeas proceeding.

Deficiency in Expert Witnesses Account

Projected Deficiency (900,000)

During the past 3 years, expenditures in this account remained fairly level with expenditures in FY08 and FY09 at 1.9M and 2M in FY10. In FY11, we are projecting expenditures of 2.7M due to the number of high profile capital cases recently concluded, or 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. 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 92,760 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. Currently jury selection is underway in the trial of Cheshire co-defendant, Joshua Komisarjevsky.

As clearly illustrated by the recently concluded capital death penalty trials of Cheshire defendant, Steven Hayes, and Fairfield defendant, Christopher DiMeo, these cases are an enormous responsibility and exceedingly costly for all agencies involved. 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. Therefore, these cases are extraordinarily expensive and place inordinate demands on all aspects of this Agency's budget and personnel. If a habeas court subsequently finds 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.

These expenses are also expected to mount further in the next biennium due to the number of appeals and habeas litigation in cases where a death sentence has been 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, and for funding the defense expert, Yale Professor John Donohue's study. Expenditures continue to mount as the litigation continues over the findings of the defense and state expert studies, and as more death eligible clients necessarily join the litigation. The trial in this matter is expected to begin during the summer or fall of 2011.

Currently there are 18 capital cases pending trial where defense experts will be retained for the guilt phase, penalty phase or both. Prosecutors are pursuing the Death Penalty in 10 of the 18 cases. The cases of six men whose cases resulted in death penalty verdicts are currently in various stages of appeal, one is on trial in state habeas court and another awaiting his state habeas trial. 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.

Should the General Assembly and the Governor abolish the Death Penalty prospectively, this Agency expects significant savings in these accounts. However, it is difficult to determine at this time how great a savings might initially occur, as it is unclear whether or not capital cases now pending might be impacted by such legislation.

OTHER EXPENSES ACCOUNT (OE)

Projected Deficiency (275,000)

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, training materials, and Agency newsletter. Both reports and a substantial number of training materials 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 to increase by \$300,000 in FY2011. In addition to a carryover of 2010 outstanding invoices of \$11,350, the most significant OE increases are in the following line items:

Storage Expenses	10,000
IT Data Services	16,000
(Case-Tracking system-1Xcost)	
IT Software Licenses	12,000
(Sunbelt Software -1Xcost)	
Loc/LD Telecomm Services	16,000
Various Minor Equipment- 1Xcost	12,500
PD Case-Tracking folders	11,000
Temporary Services (SW, Inv, Clerical)	200,000

Storage Expenses

In addition to storage rates for more than 40 field offices and specialized units, 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 many years after trial. Storage of such files is a necessity in order to comply with state and court retention policies.

Temporary Services

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. These temporary services are utilized only when necessary to insure that the business and the mission of the Agency can continue. Such services are necessary to provide coverage for permanent staff on extended leaves of absence due to serious illness, maternity, or military duty. Temporary services may also be necessary to augment Division staff when excessive caseloads or significant cases require such services be authorized. Temporary services are authorized solely by the Chief Public Defender.

Telecommunication Services

Long distance charges are calls made regarding client cases, investigation of witnesses, and or other Agency business. The statements of such are reviewed by the Division's Financial Unit and by the Manager of Administrative Services.