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State of Connecticut***

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**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER  
AGENCY BUDGET HEARING  
APPROPRIATIONS COMMITTEE  
MARCH 3, 2011**

***The Division of Public Defenders Contribution to Quality of Life in Connecticut:  
All Connecticut residents are ensured a fair, equal, and constitutional administration of  
justice within the state's criminal court system***

Good morning Senator Harp and Representative Walker and members of the Appropriations Committee. For the record, I am Attorney Susan Storey, Chief Public Defender, and with me is Financial Officer for the Division, Priscilla Kokinis. I appreciate the opportunity to discuss our budget with you. You should have copies of our latest RBA report card on Adult Indigent Defense Services for the Division. As you know this is our Agency's greatest area of expenditures and the RBA analysis for the adult population is really a combination of several programs for which we have submitted RBA report cards in past years. These include: Adult Indigent Defense Services, Adult Social Work Services, Capital Defense, and Special Public Defenders.

As important as the RBA report cards are for individual agency programs, I think it is important to utilize RBA principles systemically to achieve balanced results. Governor Malloy has expressed his desire to achieve definite goals and reforms for the system that reflect much of the work that has been done by the CJPAC collaboration, of which our agency is a member. In his budget address, the Governor expressed the need to significantly reduce the prison population without reducing public safety, maintain more non-violent offenders in the community with appropriate supervision, and to maintain essential services for the state's poorest residents. The Division of Public Defender Services is committed to helping this Administration achieve these goals. Each of the agencies testifying today have both a distinct responsibility and a collaborative role in achieving the best results for the criminal justice system during this time of fiscal crisis but great opportunity.

The Governor has also stated his commitment to protect the state's safety net for its poorest citizens. This safety net must include the constitutional protection of the right to be represented by competent counsel in criminal cases. The Division of Public Defender Services is that safety net. As our RBA Report Card indicates, our offices represented clients in 92,760 cases last year. More than 70,000 cases were in the adult courts. The liberty interest of the poor cannot be an afterthought - it is a constitutional right. Court appointment of lawyers to defend persons charged with crimes is historically a "core" Connecticut value. Our state is nationally recognized as both a pioneer in providing lawyers for defendants who cannot afford to hire an attorney and for instituting best practices in indigent defense.

The Public Defender role in the Connecticut criminal justice system is essentially and constitutionally adversarial. Attorneys and other public defender staff owe the duty of loyalty and zealous advocacy to their clients. In more recent years, however, the Division of Public Defenders has entered into very valuable collaborations with CSSD, DMHAS, DOC, DCF, DSS, and community non-profits to make sure that clients are referred for diversionary programs and rehabilitative treatment whenever possible. We have found that such collaborations are an essential component to zealous defense advocacy and serve to safely reduce the prison population, stabilize families and communities, and prevent recidivism. This Agency's RBA report card details the work and success rate of public defender social workers who create alternative to incarceration plans and collaborate extensively on a daily basis with CSSD, DMHAS, DCF, and DOC. These collaborations promote equal justice and accomplish the goals that Governor Malloy has expressed are important to achieve during the tenure of his administration.

One of the areas focused on by the Governor and CJPAC for reduction is the incarcerated pre-trial population. Public defender attorneys and social workers are the chief referral source to CSSD, DMHAS, DCF and other agencies for incarcerated client pre-trial diversion. Without sufficient staff, our Division will not be able to assess and refer appropriate clients in a timely fashion for the diversion programs offered by our partnering agencies. In order to be considered for diversion, each defendant represented by our office must be referred by the public defender attorney or social worker familiar with the client's case, and individual legal and social history. Our inability to fully collaborate with these agencies would be systemically self-defeating.

In light of last year's legislative change for the Judicial Branch, the Division of Public Defender Services, as statutorily part of Judicial, also prepared to file our budget request directly with Office of Fiscal Analysis and the Appropriations Committee. This meant that our budget, unlike prior years, should reflect no cuts or changes by OPM prior to submission. Despite this legislative change, and prior to filing with OFA we were asked to cooperate with the new administration by OPM Secretary Ben Barnes. We did so by twice voluntarily reducing our original budget request from approximately \$57.3 million to \$52.3million, an 8.67% reduction. We decided that we should make a good faith effort to work with the administration during the fiscal crisis, so long as balance was maintained with other agencies involved in the criminal court system.

However, upon review, the Governor's recommended budget contains further cuts for our Agency indicated in the "back of the budget" -- specifically at page C15. The budget note indicates that the OPM has recommended a "**targeted reduction lapse**" and is requesting that the Appropriations Committee further reduce our budget to \$49.8 million, an additional cut of \$2.5 million. The additional cuts as recommended by OPM would result in a 13.44% cut to our original budget request of \$57.3million. The impact of the OPM "savings target lapse" of \$2.5 million would result in deficiencies in several other accounts including: Payroll, Special Public Defender Non-Contractual, and Expert Witnesses. Our Agency is already running a deficiency in some of these accounts. The additional cut would also result in the termination of all per diem attorneys and temporary employees.

Temporary and per diem attorneys, investigators, social workers and clerical assistants are essential to provide constitutionally adequate services to clients. They fulfill essential functions by providing economical caseload relief in GA's that have caseloads over the Commission caseload goals, and coverage in large GA courts that have multiple specialty dockets such as Youthful Offender, Domestic Violence, Motor Vehicle, and Community Court. These time intensive dockets cannot be adequately covered by existing staff in the large urban courts. Per Diem staff also provide essential coverage for attorney, investigator, social work, and clerical staff on leaves of absence due to medical, maternity, military, and other types of long term leave.

The Appropriations Committee has historically taken great care to achieve balance among criminal justice agencies to preserve fairness in the system. The Division of Public Defender Services has provided Appropriations with comprehensive data that has justified funding decisions for our Agency in prior years. Effective balance requires an analysis beyond the bottom line amount of the budget for each agency. The RBA process provides an additional way to promote balance within the system by examining the results achieved within each Agency and their contributions to the criminal justice system. Our Agency's data and RBA report cards clearly illustrate the reasons for growth of the bottom line of our budget and document the changes in the criminal justice system and the increasing workload of public defenders during the past two decades. These changes have dramatically increased this Agency's ethical and legal responsibilities to provide effective assistance of counsel to indigent clients:

- PD attorneys are representing a higher percentage of accused defendants due to the economic downturn. Public Defenders now represent from 87% -91% of persons accused of crimes in the Part A/JD courts;
- The failing economy, increasing caseloads, and the costs associated with representing clients in high profile death penalty cases in this state are the primary causes of the growth in expenditures for our Agency. With the rise in unemployment and foreclosure rates, and the lack of the ability of accused persons to access cash or credit, the numbers of people that cannot afford to hire private attorneys and who require the services of the public defender are growing;
- Several GA attorney caseloads meet or exceed the PD Commission caseload guidelines of 450-500 new cases per attorney per year set as a result of the settlement agreement in *Rivera v. Rowland, et al.*;
- 98% of felonies remain in the GA courts and are not transferred to Part A JD dockets; GA lawyer caseloads contain a minimum of 33% minor and major felony cases;

- OLR research(June 2010) indicates that as of 2010- 61 crimes carried mandatory minimum prison sentences;
- OLR research (August 2010) indicates that since July 2007, an additional 37 public acts became law with criminal provisions;
- OLR research(March 2010) indicates that in the last decade, the legislature has increased the penalties for 10 crimes from a Class A misdemeanor to a class D felony ;
- Increasing cost for high profile capital death penalty cases, trials, appeals and habeas. Our Agency incurred expenditures of more than \$3 million in the last FY which represents a 39% increase over last FY year and 7.2% of our total budget for .06% of cases;
- Unfunded legislatively mandated intensive DV and other specialty dockets require more staff for coverage; Public Defenders are precluded from federal VAWA grants available to prosecutors;
- Recent Supreme Court decisions place more representational burdens on public defenders and require defense attorneys to counsel clients regarding collateral consequences of conviction including immigration;
- Lawyers must be trained in forensic science, DNA, toxicology;
- The necessity of greater daily collaboration of PD attorneys and social workers who refer clients to CSSD, DMHAS, DOC and DCF to achieve better outcomes for clients, greater public safety and to achieve a reduction in the pretrial prison population.

Insufficient funding for indigent defense could once again expose the State to litigation. In 1995 the Connecticut Civil Liberties Union, instituted a class- action lawsuit against then Governor Rowland and the Public Defender Services Commission (*Rivera v. Rowland, et al.*) claiming that indigent clients were not receiving effective assistance of counsel. The allegations included:

- Public defender caseloads were excessive;
- Public defenders received insufficient training and evaluation;
- Special public defenders received insufficient supervision, training, support and payment;
- Inadequate staffing and resources for Juvenile Defender Offices

The lawsuit was settled and withdrawn in 1999 because the Legislature and the Governor's Office provided a significant number of permanent positions and other resources to the Division. The Commission had also made significant changes in policy, procedures, and caseload goals.

In conclusion, and for the reasons I have outlined, I am asking this Committee to reject OPM's recommendation for further cuts to this Agency's budget as submitted. We have made a good faith voluntary effort to work with the Administration to achieve solutions in light of the fiscal crisis. We are requesting an appropriation of \$52.3 million in order to accomplish the Governor's expressed reforms and goals, and in order to comport with the Agency's constitutional and ethical obligations to indigent defendants.

Thank you very much for your attention today and I look forward to answering any questions that you might have and to meeting with the Sub-Committee on March 15<sup>th</sup>.