



**Office of Chief Public Defender  
State of Connecticut**

30 TRINITY STREET, 4<sup>TH</sup> FLOOR  
HARTFORD, CONNECTICUT 06106  
TEL (860)509-6429  
FAX (860)509-6499  
[susan.storey@jud.ct.gov](mailto:susan.storey@jud.ct.gov)

ATTORNEY SUSAN O. STOREY  
CHIEF PUBLIC DEFENDER

**TESTIMONY OF ATTORNEY SUSAN O. STOREY  
CHIEF PUBLIC DEFENDER  
GOVERNOR'S BIENNIAL BUDGET 2014-2015  
COMMITTEE ON APPROPRIATIONS  
FEBRUARY 19, 2013**

We are grateful for the Governor's funding recommendations to support our Agency's mission to fulfill the state's obligation to provide counsel in accordance with both the United States and Connecticut Constitutions to any indigent person charged with the commission of a crime that carries a risk of incarceration, and to provide representation to indigent children and adults involved in child welfare, family court, and child supports matters. With this Committee's support we hope that we will be able to fill some essential personnel vacancies that are currently frozen including three positions to finalize implementation of Raise the Age in our juvenile offices. However, there are a few areas of concern that I wish to bring to this Committee's attention that could potentially impact our budget going forward:

- We are concerned about the Governor's budget proposal to rescind the Judicial Branch's budget request protection language that is detailed on page 29 of the Governor's Budget Book. Currently, the Office of Policy and Management (OPM) cannot unilaterally adjust the budget requests of the Judicial Department or the Division of Public Defender Services (DPDS). Rescinding this protection would allow OPM to make those adjustments to Agencies outside the Executive Branch including the DPDS. It is important that our Division continue to have independence in making our budget request in order to ensure that our offices have the required resources to provide representation in accordance with state and federal constitutions and statutes. In fact, our Agency has historically showed a willingness to collaborate with OPM to make further reductions to our budget request when appropriate. For example, in recognition of the extremely serious state fiscal crisis our Agency voluntarily collaborated with the Office of Policy and Management (OPM) to reduce our budget request by \$450,472 to reflect the Roll-Out of the FY 13 Deficit Mitigation cuts.
- Lapses in the back of the budget do not appear to be severe so long as the *Unallocated Lapse* to the Judicial Branch remains unallocated. If that lapse is enforced by OPM during the next biennium, our Agency will be forced to continue to freeze key vacancies and potentially lay off temporary employees in order to ensure our budget is in balance. Lapses that appear in the back of the budget are:
  - **Unallocated Lapse**—Judicial Branch: \$7,400,672
    - Our percentage of this lapse could equal \$825,197

- **General Lapse** – Judicial Branch: \$401,946
  - Our percentage of this lapse could equal \$44,818
- **Statewide Hiring Reduction:** \$6,796,754
  - Our percentage could equal \$20,816, - 0.31% of the total state budget.

#### Potential Budget Shortfall – Assigned Counsel -Criminal Account

- **Habeas**
  - There existed a very serious and unacceptable backlog in appointment of counsel for habeas corpus petitioners for the past four (4) years. There was approximately a one (1) year backlog in appointment of counsel for petitioners eligible for public defender assigned counsel.
  - Remediating this backlog of unassigned habeas cases has resulted in an increased cost to the Assigned Counsel Criminal Account of approximately \$535,000 as Habeas cases are now paid for in the year in which they are assigned in accordance with GAAP principles. The habeas case backlog has now essentially been eliminated with far greater numbers of cases having assigned counsel appointed in a timely fashion.
  - The reduced backlog and electronic billing efficiencies instituted by OCPD are now more reflective of the real cost of habeas cases per year than in past years.
- **Misdemeanor Case Compensation**
  - For consistency and equity it would be beneficial for our Agency to raise the Criminal Assigned Counsel flat rate for misdemeanor cases to \$500 per case in the next biennium. The additional cost projected to accomplish this is estimated to be \$950,000. The flat rate for criminal cases in GA misdemeanor cases remains at \$350 per case while the Child Protection case flat rate is \$500.
  - Our Agency cannot absorb the cost of raising the rate without additional funds. This past year, our Agency achieved considerable savings within the Child Protection Assigned Counsel Account that are reflected in the Governor's current services budget. Therefore, we are requesting that a portion of the \$2.4 million savings figure indicated in the budget be re-invested in the Assigned Counsel Account in order to eliminate the discrepancy between the rates of compensation paid to assigned counsel in these types of cases.
- **Death Penalty Costs**
  - Assigned Counsel –Criminal Costs attributable to the defense of Death Penalty cases continue despite prospective repeal.
  - Total Capital Case Assigned Counsel Criminal Expenditures for FY 2013 were \$702, 825 or 8.25% of all Assigned Counsel Criminal expenditures.
  - The consolidated habeas litigation *In Re: Racial Disparities in Death Penalty Cases* was tried beginning in September through November 2012 – Assigned Counsel in Capital cases compensated at \$100 per hour.
  - The State continues to prosecute some death eligible cases where the alleged crime occurred prior to repeal and prosecution of death eligible "cold cases" in the future is a definite possibility. eg., *State v. Jusino*, *State v. Roszkowski*, *State v. Santiago*.
  - Several cases where a sentence of death was handed down are currently in various stages of mandatory direct appeal to the Connecticut Supreme Court and other post-conviction litigation. Assigned counsel in these cases are also compensated at \$100 per hour.

### Division Capacity for Further Savings

While the Division is continually revising policies and procedures for best practices and cost savings, further reductions through rescission or reduction would threaten our ability to provide competent representation for clients.

- Connecticut is constitutionally mandated per the U.S. Supreme Court decisions in *Gideon v. Wainwright*, 372 U.S. 335, (1963) and *Argersinger v. Hamlin*, 407 U.S. 25 (1972) to provide effective assistance of counsel to indigent clients in criminal cases whenever there is a risk of incarceration. The associated costs of these services, approximately 98% of our budget, including personnel, assigned counsel, and experts are mandated and therefore fixed. There are no specific programs that can be discontinued in order to provide sufficient savings without compromising representation. Therefore, budget reductions severely limit our ability to fulfill our Constitutional, statutory and ethical obligations to clients.
- The Division of Public Defender Services has very limited control over the numbers of indigent clients that are referred, apply and are eligible for appointment of counsel who enter the criminal, juvenile, child welfare, family and child support court systems and require representation;
  - Division staff and assigned counsel represented indigent adults and children in approximately **101,000 combined criminal and child welfare matters in FY2012**.
  - Ten GA Public Defender field offices continue to exceed Commission Caseload Guidelines for individual attorneys of 450-500 new cases per year, and greatly exceed nationally recommended mixed misdemeanor/felony caseload guidelines.
  - Individual **pending** caseloads for some GA public defender attorneys exceed 200 cases
  - Major felonies accounted for 13.5% of the total GA caseloads in 2012 including Robbery, Sexual Assault, Arson, Kidnapping, Risk of Injury to Minors and Vehicular Homicide, with eight (8) GA's averaging between 18-21% of their caseloads as major felonies.