



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

KEVIN T. KANE, CHIEF STATE'S ATTORNEY

JOINT COMMITTEE ON APPROPRIATIONS
February 19, 2014

The Division of Criminal Justice wishes to express its appreciation to the Joint Committee on Appropriations for this opportunity to present additional information regarding the Governor's FY15 Midterm Budget Adjustments. We also wish to thank the Governor and the Office of Policy and Management for their thorough review of the Division's operations. The Division looks forward to working with the Committee as you proceed with your examination of our funding requirements to assure our continued ability to fulfill our constitutionally mandated mission.

One year ago today, the Division appeared before the Committee to present our testimony on the Governor's Budget for the 2014-15 biennium. Much of what we had to say at that time still applies and while we are greatly appreciative of revisions made by the Appropriations Committee during last year's budget process, we still cannot understate the impact that the loss of some 10 percent of our General Fund positions in recent years has had on our ability to effectively carry out our mission.

In fact, our caseload analysis reflects how critical the situation has become. In FY 2013, the Division took in more than 280,000 new cases. This number includes felonies, misdemeanors, motor vehicle cases and those infractions in which people have pleaded not guilty and requested trials. Some cases, such as infractions, can be handled with one court appearance. Others require months, and sometimes even years, to resolve. At the present time, 188 prosecutors are assigned to handle these matters on a daily basis, which amounts to more than 1,400 new cases per prosecutor per year. The rest of our front-line prosecutors (approximately 40) are assigned to defend convictions obtained at the trial court level either on direct appeal or in the *habeas* court, where convictions are subjected to collateral attack. The caseloads in these areas are equally compelling and break down as follows: (1) 1,054 pending *habeas* cases assigned to 11 prosecutors at a rate of 96 cases per prosecutor, and (2) 884 pending direct appeals of convictions assigned to 28 prosecutors at a rate of 32 cases per prosecutor. The remaining dozen or so prosecutors handle everything from complex white-collar crimes to government fraud cases as well as lengthy investigatory grand jury investigations and prosecutions involving urban violence and "cold case" homicides.

The fundamental concern that the Division brings before the Committee remains the same: the administration of justice should not be examined solely as a tally of quantity but rather as a rightful demand for quality. While the number of reported crimes has decreased in recent years, the U.S. Justice Department reports an increase in the number of

unreported crimes, resulting in a slight increase in the overall crime rate in 2011 and 2012 ("Criminal Victimization, 2012." U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics *Bulletin*, October 2013). Further, and again as we noted last year, we must avoid the temptation to focus solely on the number of arrests and decline in reported crime since to do so places too great an emphasis on the "back end" of the criminal justice system. It also must be stressed that while we had more personnel years ago to deal with the higher crime rate then, the resources still were not adequate to do the job as it should be done. Succinctly stated, the system is barely holding together today and remains at risk of falling apart and it has been for a number of years. It is only through tight management and constant redeployment of resources – and the tremendous dedication and commitment of our staff – that the system has not fallen apart.

In the last several years the Division of Criminal Justice has experienced the loss of more than 10 percent of General Fund positions. This includes prosecutors, sworn Inspectors and clerical and support personnel. In some areas, the reduction has been far more notable as the Division has redeployed resources. For example, we have experienced a loss of more than 18 percent from our central administrative staff in Rocky Hill over the same time period to which the 10 percent overall position loss applies. This leaves roughly two dozen people to handle the information technology, human resources, accounting, purchasing, payroll, budgeting, grants management and Equal Employment Opportunity responsibilities for a \$50 million agency with more than 500 employees scattered at more than fifty locations statewide.

The Division has spent considerable time developing better practices as well as legislation in the areas of eyewitness identification procedures and the recording of interrogations. All of this, along with improvements in forensic science and other "best practices," has significantly increased the need to train our employees and for our employees not only to help train police officers, but to engage with police officers during the course of investigations prior to deciding whether to charge someone with a crime. The most effective way to avoid wrongful convictions is to more thoroughly and effectively investigate cases prior to arrest and trial.

By way of comparison, a national commission created by the U.S. Department of Justice in 1968 studied the problem of excessive caseloads for public defender personnel recommended a caseload of no more than 150 felony matters or 400 misdemeanors per attorney in any year. While these guidelines were recommended – and supported by academicians, criminal justice agencies and the American Bar Association – for public defenders, the Division believes they also should apply to prosecutors. In fact, if anything, the caseload should be lower now for two significant reasons: (1) the prosecutor has substantial duties beyond those of the public defender (or other defense attorney) in the pre-arrest stages (i.e., review of arrest warrant applications, search warrant applications, conduct of major criminal investigations and advising and training police); and (2) the complexities of the criminal justice system are far beyond anything that could have been imagined when the 1968 standards were recommended.

By contrast to the recommendation of 150 felonies or 400 misdemeanors, the most recent data compiled by the Division puts the average caseload per prosecutor at nearly 800 cases per prosecutor (felonies and misdemeanors) and closer to 1,200 when infractions cases are added. And again, this does not account for the additional responsibilities such as reviewing arrest warrant applications, reviewing search warrant applications, conducting investigations with law enforcement agencies, providing legal advice and expertise to law

enforcement agencies, training of law enforcement personnel, training of Division staff or conducting grand jury investigations.

As a result, for most cases the prosecutor will not become actively involved until the arrest has been made and the case added to the court docket. This is late in the game for assessing the strengths or weaknesses of the case. Had the prosecutor been involved before the arrest warrant application was presented, it would have provided greater opportunity to assess the case, and, yes in some cases whether an arrest should ever have been made. The most important function that the prosecutor has is to determine whether to charge and what to charge – or whether not to charge at all. And once the case gets to court, the problem is compounded as the prosecutor finds little time to devote to each individual case. The ramifications are obvious: there is insufficient time to meet with victims and attend to their needs; there is insufficient time to conduct the investigation and review to determine culpability and guilt, resulting in dispositions where the guilty go free and innocent may end up pleading guilty simply to get the best deal.

All this said, the Division is fully cognizant of the state's continued financial pressures and the tremendous demands that are placed upon the limited taxpayer dollars available. We recognize that it is not possible for the General Assembly to fund each and every program to the extent every agency requests. We also remain firmly committed to continued efforts to maximize the results produced from every dollar that is allocated to our agency (we note that the Division of Criminal Justice has never sought a deficiency appropriation from the General Assembly). As such, the Division would respectfully submit the following limited requests for additional resources for consideration by the Committee and the General Assembly:

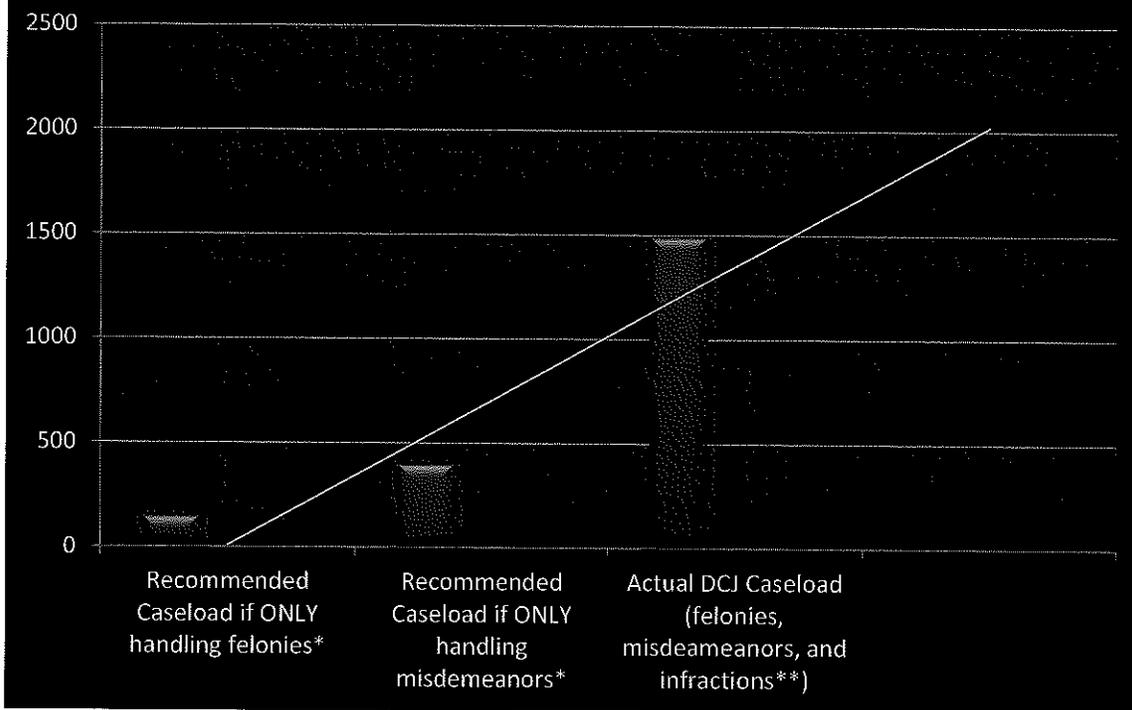
(1) New positions for prosecution of domestic violence cases. Domestic violence cases have grown to where they now account for 35 percent of our caseload. These are generally complex cases that require multiple layers of review and investigation. Federal funding (Violence Against Women Act) for positions dedicated to the investigation and prosecution of domestic violence cases has diminished greatly in recent years. The Division respectfully requests five General Fund positions in this critical area.

(2) Permanent positions for long-term temporary employees. As the number of permanent positions has decreased, the Division has become increasingly reliant on per diem contract employees, both as prosecutors and to lesser extent for clerical support. Some of these individuals have devoted years to the Division without receiving increases in compensation or any benefits. As a result, the Division runs the risk of losing these employees and the time and money that has been invested in their training. We would respectfully request ten positions for prosecutors and three clerical positions to address our needs in this area.

(3) Information technology. The Division recently completed a multi-million dollar upgrade of its IT infrastructure financed with federal grants. This project was designed to prepare the Division for the key role that it will play as a gatekeeper for the Connecticut Information Sharing System (CISS) that is now under development. We are also moving forward with our efforts to implement a case management system that will be critical both to the internal efficiency of the Division and to the overall operation of CISS. At the present time the Division has only five IT employees to serve our more than 500 employees and fifty locations statewide. To attempt to implement case management and CISS without additional IT personnel would place both initiatives at great risk of failure. A minimum of three additional personnel is respectfully requested in this critical area.

In conclusion, the Division again wishes to express its appreciation to the Committee for affording us the opportunity to present this information for your consideration and for your thoughtful review of our budget situation. We would be happy to provide any additional information that the Committee might require or to answer any questions that you might have. Thank you.

Caseload Per Prosecutor FY '13



*A national commission created by the Department of Justice in 1968 studied the problem of excessive caseloads and adopted a recommendation that public defender personnel handle no more than 150 felonies or 400 misdemeanors in any year – recommendations endorsed by academicians, criminal justice agencies, and the American Bar Association to ensure that attorneys can provide each case with the time and care it deserves. The Division strongly believes that these guidelines serve the cause of justice and should apply to prosecutors as well.

**This caseload -- 1,491 per prosecutor -- includes 52,900 infractions (handled by Regionalized Infractions per diem prosecutors).

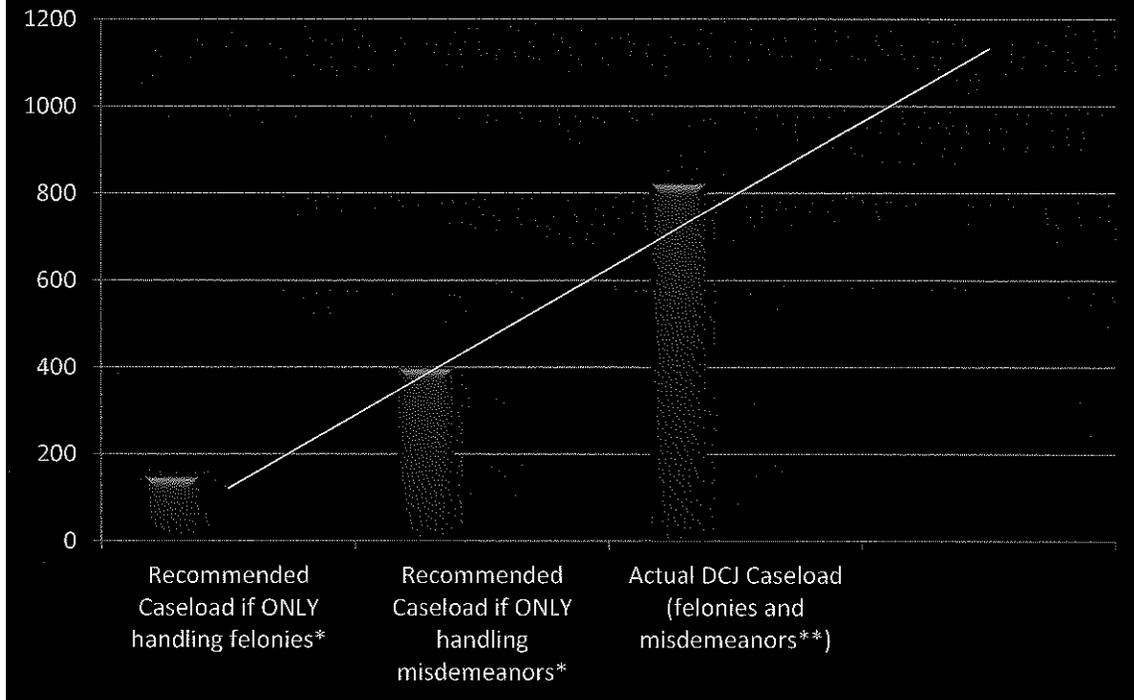
Please note these figures do not take into account the following prosecutorial responsibilities:

- Reviewing arrest warrants
- Reviewing all search warrants
- Conducting investigations with Law Enforcement Agencies
- Providing legal expertise to Law Enforcement Agencies
- Training Law Enforcement personnel
- Training DCJ staff
- Conducting Grand Jury investigations

In addition:

- The percentage of cases pending over time standards in the GAs has risen 13% since FY'10.
- The Division conducted 49% more trials in FY'13 than in FY'12.

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**This caseload – 824 per prosecutor -- does NOT include 72,400 infractions handled by permanent prosecutors or 52,900 infractions handled by Regionalized Infractions per diem prosecutors.

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**MIDDLETOWN (GA 9) DOCKET
FEBRUARY 1, 2014**

GA #9

3 permanent prosecutors

316 cases (includes Motor Vehicle)

6 hour docket = 1080 prosecutor minutes = 3.42 minutes per case.



**MANCHESTER (GA 12) DOCKET
JANUARY 13, 2014**

GA #12

3 permanent prosecutors

306 cases (includes Motor Vehicle)

6 hour docket = 1080 prosecutor minutes = 3.53 minutes per case.