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**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER
AGENCY MID-TERM BUDGET HEARING
APPROPRIATIONS COMMITTEE
February 19, 2014**

Good afternoon Senator Bye and Representative Walker and members of the Appropriations Committee. I am Attorney Susan Storey, Chief Public Defender, and with me is Financial Director for the Public Defender Division, Stephen Hunt. Our Agency appreciates the opportunity to comment on the Governor's recommended FY 2015 Mid-Term Budget Adjustments that provide additional funding for contracted assigned counsel in criminal matters and recommend consolidation of funding for all contracted assigned counsel into a single account. These recommendations will not only provide our Agency with more sufficient funding in assigned counsel criminal matters, but will also allow our Agency to have a greater level of flexibility and efficiency in managing these contracted attorney funds going forward.

The Governor's recommendation for additional funding for our Agency due to greater expenditures in the Assigned Counsel Criminal Account is very much appreciated and necessary for several reasons:

- Pursuant to C. G. S. Section 51-296 (a), the Division of Public Defender Services must provide representation for indigent habeas petitioners whose claims arise from a criminal matter. The Division of Public Defender Services has no control over the numbers of habeas petitions filed or appointments made by the habeas court.
- P.A. 12-115, effective October 1, 2012, placed more restrictive time limits on habeas filings and has the potential to cause a considerable increase in habeas corpus filings by inmates who are concerned that they could be foreclosed from relief.
- During the past year our Agency addressed a serious backlog of nearly 400 habeas cases for indigent petitioners who had been waiting for appointment of counsel for up to a year or more. OCPD undertook a pilot project of recruiting assigned counsel from law firms at a reduced hourly rate whose lawyers had

demonstrated expertise in habeas corpus matters to accept both backlogged and new habeas cases. This model has proven to be very effective from both a fiscal and representational perspective. These cases are ongoing and therefore will require additional funding in the Assigned Counsel Criminal Account.

- Our Agency also instituted an assigned counsel electronic appointment and billing system in accordance with GAAP accounting principles. While the “real time” payment of invoices assists this Agency and funders to more accurately project actual cost of services for budgetary purposes it has also resulted in acceleration of payments to assigned counsel for services provided. The electronic billing process is more accurate, eliminates duplicate billing, and has eliminated the prior three to five months delay in payment of such invoices.
- Despite prospective repeal, the cost of Death Penalty continues to present a very significant drain on the Agency’s appropriation in the Assigned Counsel Criminal Account at all stages of litigation- trial, appeal and habeas corpus. Below is a chart the details FY 13 and FY 14 assigned counsel costs in the consolidated Racial Disparities in Death Penalty habeas litigation, which is now on appeal, the Cheshire case appeals and all other capital cases that this Agency is currently litigating.

	FY 13	FY 14
Racial Disparity	\$ 657,205	\$ 188,133
Cheshire	\$ 113,125	\$ 103,255
Other Capital	\$ 468,366	\$ 105,782
Total	\$ 1,238,695	\$ 397,170

- This Office is also incurring assigned counsel costs due to the Legislature’s failure to pass legislation during the last session that would have provided for review for “juvenile look back” cases impacted by the U.S. Supreme Court decisions in *Graham v. Florida* (2010) and *Miller v. Alabama* (2012). A significant number of indigent inmates are entitled to have counsel appointed to seek relief pursuant to *Motions to Correct an Illegal Sentence* and are entitled to public defender or assigned counsel representation pursuant to the ruling in *State v. Casiano*, 282 Conn 614, 2007.

The Governor’s recommendation to consolidate funding for all contracted assigned counsel into a single account is also beneficial because:

- Assigned Counsel fiscal demands are based upon many variables such as crime rates, abuse and neglect findings by DCF, unusually costly cases and other unpredictable events that vary year to year. Consolidating these funds allows the Agency to apply the funds where they are needed the most without requiring additional time for FAC or early release of holdbacks.

- Payment delays to attorneys cause a reduction of quality representation for the Assigned Counsel clients. Private attorneys that handle both criminal and child protection matters are frustrated when one SID exhausts its funding prior to receiving its next allotment. This results in attorneys receiving timely payment for some cases while payment is delayed for others. In the past, such frustration and delays in payment for work performed has caused highly qualified attorneys to cease taking appointments in assigned counsel cases.
- Assigned Counsel are all contracted attorneys who are required to sign the same contract with our Division regardless of the type of case they have been assigned. As a result, it makes budgetary sense to have these funds in a single account.