



***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

ATTORNEY SUSAN O. STOREY  
CHIEF PUBLIC DEFENDER

**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER  
DIVISION OF PUBLIC DEFENDER SERVICES  
AGENCY BUDGET HEARING  
APPROPRIATIONS COMMITTEE  
MARCH 5, 2015**

**The Division of Public Defenders Contribution to Quality of Life in Connecticut:**  
*All members of the public are ensured a fair, equal, and constitutional administration of justice within the State's criminal and child welfare court systems*

The Governor's Budget proposes several problematic lapses to the budget of the Public Defender Services Commission. Those lapses are summarized below:

<b>Lapses - PDS SHARE</b>	<b>FY 16</b>	<b>FY 17</b>
<b>Reduce Funding in Excess of Current Services - Judicial</b>	\$ (1,263,200)	\$ (1,263,200)
<b>Eliminate PDSC Funding for Requested Expansions</b>	\$ (4,289,179)	\$ (4,289,179)
<b>Total</b>	<b>\$ (5,552,379)</b>	<b>\$ (5,552,379)</b>

The implementation of these lapses would effectively eliminate the budget priorities, both current services and policy options, which were requested by our Agency in the Governor's budget. These budget priorities, and why they are necessary, are outlined below.

**Current Services**

The Public Defenders requested the following current services increases in order to maintain the current level of services and benefits provided by our Agency into the next biennium. Those current services increases are outlined below:

<b>Notable Current Services Increases</b>			
<b>Personal Services – Collectively Bargained Increases</b>	\$	2,022,471	\$ 2,322,542
<b>Assigned Counsel</b>	\$	3,893,600	\$ 3,893,600
<b>Expert Witnesses</b>	\$	939,838	\$ 939,838
<b>Total</b>	\$	<b>6,890,742</b>	\$ <b>7,234,708</b>

The increases in the Assigned Counsel and Expert Witnesses Accounts were requested in order to appropriately fund these accounts going forward. Over the past few fiscal years, the Assigned Counsel Account has experienced significant deficiencies that have had to be resolved through deficiency appropriations and FAC's. Below is a summary of previous deficiencies in this account:

<b>Fiscal Year</b>	<b>Assigned Counsel Deficiency</b>	
<b>FY 12</b>	\$	(2,400,000)
<b>FY 13</b>	\$	(2,190,000)
<b>FY 14</b>	\$	(4,240,000)
<b>FY 15</b>	\$	(4,650,000)

The recent FY 14 and FY 15 deficiencies are primarily the result of a bill passed in the session of 2012, *HB 5554, An Act Concerning Habeas Corpus Reform*. The legislation established a statute of limitations thereby reducing the length of time in which a habeas petition can be filed. This significant change has resulted in an influx of habeas petitions as predicted by the Agency. The number of petitions filed has doubled since the legislation was passed. As a consequence, the costs of habeas cases have increased significantly. In order to resolve this problem, our Agency requested \$3.89 million in the Assigned Counsel Account. However, if these previously identified lapses are kept in the budget, specifically the *Reduce Funding in Excess of Current Services Lapse*, these deficiencies will only continue into the next biennium.

Additionally, despite prospective repeal of the Death Penalty in Connecticut, Assigned Counsel still play a significant role in ongoing Death Penalty direct appeals and habeas corpus matters. The habeas matters also require considerable expenditures for expert witnesses in preparation for trial. These expenditures are essential for effective assistance of counsel and beyond our control. Additionally, there have been numerous other legislative and court decisions this year that have affected our Expert Witnesses Account. The Connecticut Supreme Court decision in *State v. Wang*, 312 Conn. 222 (June 2014) now mandates that the Division of Public Defender Services pay for reasonably necessary expert witnesses when requested by pro-se indigent defendants in criminal cases. Historically, these expenditures had been court ordered and paid for by the Judicial Department. Our Agency was not responsible for such expert costs prior to this decision and therefore they were not contemplated in any prior budget request.

Furthermore, the General Assembly’s failure to pass legislation in the past two sessions to address “look-back” procedures in accordance with the U.S. Supreme Court cases of Graham v. Florida, 560 U.S. 48 (2010) and Miller v. Alabama, U.S. 132 S. Ct, 2455 (2012), resulted in an influx of *Motions to Correct an Illegal Sentence* from inmates seeking potential relief. The Connecticut Supreme Court has held that counsel must be appointed to represent those who file such motions to determine whether or not a sound basis exists to pursue the motion. See State v. Casiano, 282 Conn. 614 (2007), and State v. Francis, 148 C. App.565 (2014). Additionally, the Connecticut Supreme Court in the case of State v. Akeem Riley, S.C. 19109, (Official release date March 10, 2015), held that courts must consider the factors and science of youth pursuant to Miller v. Alabama when sentencing juveniles to life as adults. Therefore, going forward, such cases will require much greater utilization of mitigation experts by the defense.

Finally, several months ago, the Judicial Department informed us that they could no longer allow Judicial Interpreters to accompany public defender staff or Assigned Counsel to correctional facilities or on field investigations to assist them with the representation of non-English speaking and LEP clients. Therefore, our Agency is now responsible for the costs of interpreters necessary for case preparation and translations of appellate briefs and other documents for non-English speaking clients. These are expert expenses that must be incurred by our Agency for purposes of constitutional fundamental fairness and effective assistance of counsel. Our Agency would also like to acquire Language Line equipment and services similar to that utilized by the Judicial Department in the courthouses and in the field to provide improved representation to non-English speaking clients in criminal and child welfare matters.

**Agency Concern Over Judicial Branch Rescission Distribution**

Despite the fact that our Division operation and budget is statutorily independent of the Judicial Department pursuant to C.G.S. Sec. 51-289, the Governor’s office has already levied FY15 rescissions against our Agency as part of the Judicial Branch. Inclusion as part of the Judicial Branch for budgetary purpose leaves the Division in the position of negotiating a “share” of the rescission with the Judicial Department. Therefore, our Agency numbers have been apportioned at about 10% of the Judicial Branch’s total rescission. This process results in gross inequities between the amount of our rescission and that of the Division of Criminal Justice. Historically, our Agency Budget and any rescissions (for Criminal Matters and not including Child Protection) have been apportioned in comparison to Criminal Justice to preserve parity of resources and balance to the criminal justice system. As you can see from the chart below, the current formula results in cuts for the Public Defender Division that are more than ten (10) times greater than those attributed to Criminal Justice. This formula has the potential to result in inequities of resources of constitutional proportions.

<b>FY 15 Governor Rescissions; PDS vs. DCJ</b>		
<b>PDS</b>	<b>\$</b>	<b>1,226,254</b>
<b>DCJ</b>	<b>\$</b>	<b>132,875</b>

## Policy Options

Our Agency requested several policy options in the Governor’s budget that were taken out through the ‘Eliminate PDSC Funding for Requested Options’ back-of-the-budget lapse. These include:

Policy Options	FY 16	FY 17
Provide Funding for Assigned Counsel Rate Increases	\$ 2,957,101	\$ 2,957,101
Provide Funding for Additional PD Staff	\$ 1,162,078	\$ 1,162,078
Provide Funding for Broadband Card Access for PD Laptops	\$ 135,000	\$ 135,000
Provide Additional Training Funding for PD’s	\$ 35,000	\$ 35,000
<b>Total</b>	<b>\$ 4,289,179</b>	<b>\$ 4,289,179</b>

### 1. Assigned Counsel Rate Increase

Our Agency requested funding to increase the Assigned Counsel rates in our Geographical Area (GA) courts and in Juvenile Delinquency matters to \$500 per case from \$350. This will align the flat rates with the Family GAL and Child Protection assignments. The Assigned Counsel GA and Delinquency flat rates have not been adjusted since 2008.

### 2. Additional Public Defender Personnel

Our Agency has requested additional personnel to meet the current needs of the Agency. These positions include the following:

#### **Two (2) APD Juvenile/Child Protection Attorneys for Enhanced Representation of Transitional Youth and Division Child Protection Training**

**(PS @ 83,094 OE@ 2,493)**

This request for funding is for two Assistant Public Defenders (Transitional Youth Attorneys) to specifically represent youth who are without families and who are transitioning from the care of the Department of Children and Families into communities. According to the Connecticut General Assembly’s Legislative Program and Review and Investigations Committee, 440 children turned 18 while still in the care of the Department of Children and Families in FY 2013. While specific data on Connecticut youth is unavailable, national studies show that these youth have a higher likelihood of homelessness, unemployment and incarceration in adult facilities.

OCPD recognizes that older youth can benefit from specialized advocacy, designed to help them get maximum benefit from the services DCF currently offers and to assist them in making successful transition back into school, independence or beneficial community and family support systems. OCPD is requesting funding for two experienced juvenile attorney positions to begin a program to improve outcomes for these adolescents. The attorneys will focus solely on these cases statewide. The

experienced Transitional Youth attorneys will also assist the Director of Juvenile Delinquency Defense and Child Protection in training Division staff and Assigned Counsel on representing the young people who represent this population in delinquency, transfer, and child welfare cases.

Cases will be reviewed and assigned by staff at the Child Protection/Juvenile Unit. Most cases will be assigned to the Transitional Youth Attorneys and assigned counsel who will be trained by the Transitional Youth Attorneys. We expect that by tracking activity and outcomes, we will be able to show that enhanced representation can provide better results for Connecticut's youth while keeping the cost within what is reasonable given the status of the current state budget.

**Quality of Life: Better outcomes for transitional youth leaving the care of DCF without permanent and supportive families**

**Partners: DCF, DMHAS, CSSD, DOC, OCA, Juvenile Justice Alliance, Non-profits dealing with homelessness, Center for Children's Advocacy**

**Proposed Action to Turn the Curve: Work in partnership with the Governor's Second Chance Society Initiative by providing educational, employment and housing advocacy for vulnerable youth transitioning out of DCF care.**

**Two (2) DAPD attorneys for Family Support Matters (Waterbury, New Haven, Bridgeport)**

**(PS @65,671 OE@1,970)**

This request for funding is for two permanent entry level attorneys to represent contemnors in support enforcement hearings. In 2011, the Division assumed responsibility for all Child Welfare matters as well as Family Support matters that were formerly under the Office of the Child Protection Attorney. Historically, the support contempt hearings have been handled by contract attorneys, but such representation and coverage has sometimes proved to be burdensome to the contract attorneys as well as unsatisfactory to the magistrates hearing these cases. This issue has become increasingly problematic due to the fact that the Judicial Department recently received funding through DSS to hire additional marshals specifically to conduct "sweeps", i.e. the arrest of multiple persons in arrears for child support. These arrests which require immediate court procedures may occur on days that this Agency has not contracted with attorneys to provide coverage. In 2012, OCPD decided to hire permanent staff for the Hartford Magistrate's Court to provide consistent daily coverage. This arrangement has proven to be very effective and efficient for everyone.

**Quality of Life : More effective and timely mediation and resolution of child support arrearages**

**Partners: DCF, Family magistrates, DOC, CSSD, families owed child support**

**Proposed Action to Turn the Curve: Collaborate with Judicial magistrates by providing more timely and effective resolution of child support matters to benefit communities and child welfare.**

## **Two (2) Investigator I positions for GA10 New London and Ansonia Milford JD/GA22**

**(PS@ 54,446 OE@1,633)**

This request for funding is for two additional entry level investigator positions for New London GA10 and for the Ansonia/ Milford combined JD/GA#22 Public Defender Offices. Both offices need additional investigative assistance given their caseloads. New London has 6 attorneys and high caseloads as well as a time intensive domestic violence docket. The GA caseload also has a large percentage of felony cases in the more than 825 cases currently pending before the court as of this date. The Ansonia -Milford office is a combined JD/GA office and is the only combined office handling the most serious cases, as well as the GA cases (66 JD/310 GA pending) with only one investigator. Both offices need additional permanent criminal defense investigative staff which is constitutionally required by both the state and federal constitution for effective assistance of counsel.

**Quality of Life: Ensure the 6<sup>th</sup> Amendment constitutional guarantee of effective assistance of counsel which requires independent fact investigation of criminal charges by the defense and more expeditious resolution of cases for CT public.**

**Partners: Judicial, CSSD, DOC, DCJ**

**Proposed Action to Turn the Curve: Collaborate with the Governor's Second Chance Initiative by more expeditious and just resolution of criminal cases.**

## **Two (2) Public Defender Domestic Violence Social Workers**

**(PS@58,570 OE@1,757)**

This request for funding is for two additional domestic violence social workers to be placed in GA offices with the highest caseloads of domestic violence cases. This Agency currently has two domestic violence social workers in New Haven GA#23 and Bridgeport GA#2 respectively. Their individual caseloads range from 200-300 pending domestic violence cases. Domestic violence cases account for approximately 33% of criminal cases statewide and are a serious problem. Domestic violence social workers assist those charged with these offenses from the time of arraignment through case disposition in order to arrange services not offered through the court domestic violence programs. Public defender social workers address the collateral issues such as substance abuse, mental health, and homelessness that can intensify further domestic violence incidents, especially upon arrest. Public Defender Social Workers also monitor their clients' progress to insure compliance with protective orders and successful completion of court ordered programs. As such, the DV Social workers attempt to add another level of community safety for all parties to address this serious problem.

**Quality of Life: Public Defender DV social workers add an additional component of community safety by assisting clients with the underlying social issues that can lead to future or more serious incidents of domestic violence.**

**Partners: Judicial, CSSD, Judicial Victim Advocates, DV program providers, OVA, DOC, DMHAS, Non-profit DV court program providers**

**Proposed Action to Turn the Curve: Improve public safety by addressing the underlying social issues that can fuel acts of domestic violence such as, substance abuse, mental health, employment, education and homelessness. Prompt attention to defendants after arrest helps to avoid violation of protective and other court orders imposed at arraignment and supports defendants to complete court imposed DV programming in order to reduce further domestic violence incidents.**

### **One (1) Public Defender Social Worker Fairfield JD**

**(PS 58,570 OE 1,757)**

This request is for funding for a Public Defender Social Worker for the Fairfield J.D. Public Defender Office. This Office is the only JD office that currently does not have a social worker to provide clinical social work support, alternative sentencing recommendations, and mitigation services for clients charged with the most serious crimes.

**Quality of Life: Public Defender social workers gather critical information as part of the defense team to insure client's constitutional right to effective assistance of counsel and promote fairness to individual defendants in the justice system.**

**Partners: Judicial, DCJ, CSSD, DOC, DMHAS, JRI**

**Proposed Action to Turn the Curve: Participate in the Governor's Second Chance Society Initiative to prevent unnecessary incarceration of non-violent offenders, and to provide beneficial social information that that will assist DOC or CSSD in fashioning an appropriate OAP or probation plan.**

### **Two (2) Assistant Public Defender- Forensic Trial Services Unit**

**(PS@83,094 OE@ 2,493)**

This request for funding is for two Assistant Public Defender positions to serve as advisors and specialists in forensic matters to support public defender trial attorneys and assigned counsel throughout the State in DNA and other forensic matters. Many public defender organizations throughout the country have such units which have proven to be very cost effective for initial analysis and consultation in criminal cases with complex forensic issues. These attorneys will initially be responsible for reviewing all DNA cases and advising attorneys as to whether or not additional services from an expert will be necessary. A preliminary informal trial of this pilot of has revealed that consolidation and prior review within our Agency provides both beneficial "in-house" advice by highly trained attorneys and a substantial cost savings.

**Quality of Life: Attorneys with specialized forensic training will advise public defender staff and assigned counsel regarding forensic matters to insure constitutionally mandated effective assistance of counsel and considerably reduce the need and cost of outside forensic experts to the Division.**

**Partners: Assigned Counsel, DCJ, Judicial, Governor's Second Chance Initiative**

**Proposed Action to Turn the Curve: Reduce Division's reliance on outside DNA forensic experts and forensic DNA training while insuring effective assistance of counsel on complex DNA and other forensic issues.**

### **One (1) Assistant Public Defender Legal Services Division**

**(PS 83,094 OE 2,493)**

This request for funding is for one additional Assistant Public Defender for the Agency's Appellate Unit due to the continuing burden and complexity of direct appeals in Death Penalty cases which are ongoing despite prospective repeal. It has been necessary to reassign more Legal Services attorneys to assist with these very complex and lengthy appeals. As such, Legal Services attorneys now involved in preparing Death Penalty appeals are not able to also handle other appeals coming into the office. Another permanent appellate attorney is necessary to handle non-capital cases.

**Quality of Life: Timely resolution of criminal appeals furthers client and public trust and confidence in the criminal justice system.**

**Partners: CT Supreme and Appellate Courts, DCJ**

**Proposed Action to Turn the Curve: Assign adequate staff pursuant to ABA standards in Death Penalty cases to meet the timeline demands of the Ct Supreme Court.**

### **One (1) DAPD Caseload Relief**

**(PS 65,671 OE 1,970)**

This request for funding is for an additional permanent entry level attorney for caseload relief in a GA court where individual attorney caseloads meet or exceed the caseload goals established by the Public Defender Division (450-500 new cases per attorney per year). Although the initial request designated Derby GA#5, this Agency has hired an attorney for that office due to the urgency of alleviating the burden of individual attorney caseloads that had repeatedly exceeded those guidelines. Currently, there are several GA courts that are also in this situation, and it would be the intention of this Office to place the additional attorney wherever one is needed -most for caseload relief.

**Quality of Life- State of CT complies with Public Defender Services Commission Guidelines and constitutional mandates to provide effective assistance of counsel for indigent persons charged with crimes.**

**Partners: Judicial, DCJ, CSSD, DOC, DMHAS,**

**Proposed action to turn the curve: Collaborate with other criminal justice agencies pursuant to the Governor's Second Chance Initiative to reduce incarceration of non-violent offenders.**

**Temporary Attorneys**

**(PS 238,080)**

This request for funding is for additional PS for temporary attorneys who are essential for maintaining caseload goals in offices where attorney staff are on long term leaves of absence due to illness, maternity, or other types of leave. It has become extremely difficult for the Agency to maintain adequate representation for clients without sufficient funding to employ a sufficient number of temporary attorneys for this purpose.

**Quality of Life: Persons charged with crimes who cannot afford representation receive effective assistance of counsel as mandated by the constitution**

**Partners: Judicial, DCJ, CSSD, DOC, DCF, DMHAS, Community providers**

**Proposed action to turn the curve: Collaborate with other criminal justice agencies pursuant to the Governor's Second Chance Initiative to reduce incarceration of non-violent offenders.**