



*Office of Chief Public Defender
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**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER
DIVISION OF PUBLIC DEFENDER SERVICES
APPROPRIATIONS COMMITTEE
TESTIMONY REGARDING HB 6825
April 21, 2015**

The Public Defender Services Commission is experiencing a FY 15 deficiency of approximately \$6.3 million in the Personal Services account. This shortfall is the result of three factors:

- 1) FAC transfer of \$4.96 million to eliminate deficiencies in Assigned Counsel and Expert accounts;
- 2) Governor's Rescissions of \$1.226 million; and
- 3) Higher than anticipated accumulated leave payouts of \$137,000.

The current FY 15 deficiency is 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 FY 15, the Agency has experienced a deficiency of \$4.65 million in the Assigned Counsel account and \$310,000 in the Expert Witnesses account due to the influx of habeas cases. In order to resolve this problem and avoid a significant delay in payment to attorneys and expert witnesses, the Finance Advisory Committee (FAC) approved a transfer of \$4.96 million from the Personal Services account to the Assigned Counsel and Expert Witnesses accounts.

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. To date, this ruling has not resulted in many requests for assistance and costs to the Agency. However, going forward this has the potential to result in additional costs to our Expert Witnesses account.

Another significant cause of the current FY 15 deficiency is the Governor’s rescissions that were issued to the Agency, which totaled \$1,226,254. 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 in 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.

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

Finally, the Agency has experienced higher than anticipated levels of accumulated leave payouts to retirees this fiscal year, which has driven up costs in the Personal Services account. The additional costs in this account are \$137,000.