



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

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**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER  
APPROPRIATIONS COMMITTEE  
H.B. 5043 AAC MAKING DEFICIENCY APPROPRIATIONS FOR THE FISCAL  
YEAR ENDING JUNE 30, 2016  
MARCH 18, 2016**

The Office of Chief Public Defender is currently experiencing increased Child Protection and Habeas caseloads that are resulting in significant increased costs in the Assigned Counsel and Expert Witnesses Accounts. In addition, the Personal Services account has a shortfall as a result of the Deficit Mitigation and Lapse reductions. These costs are resulting in a total projected FY 16 deficiency of \$3.85 million. In order to understand the current deficiencies, it is essential to recognize that the Public Defender Services Commission cannot control the volume of cases received by our Child Protection or Habeas field offices. If legislation is passed, as in 2012, or other agencies institute policies that result in sudden increases in criminal or child protection caseloads, our Agency is constitutionally mandated as a "core" function to provide representation for those cases. The below chart details the FY 16 projected deficiency.

| <b>Account</b>    | <b>FY 16 Projected</b> |
|-------------------|------------------------|
| Assigned Counsel  | \$ (2,000,000)         |
| Personal Services | \$ (1,650,000)         |
| Expert Witnesses  | \$ (100,000)           |
| <b>Total</b>      | <b>\$ (3,750,000)</b>  |

**Habeas Corpus**

Our Division is also experiencing a deficiency of \$820,000 in the Assigned Counsel Account and \$100,000 in the Expert Witnesses Account for the current fiscal year. The increase is due to increased habeas costs in the Assigned Counsel and Expert Witness Accounts. Costs have increased primarily as a result of a bill passed in the session of 2012, *HB 5554, An Act Concerning Habeas Corpus*

*Reform.* The legislation reduced the length of time in which a habeas petition can be filed, which in turn has resulted in an influx of habeas petitions received by the Agency. For the 6 years preceding the reform legislation - the average number of cases assigned out to contract attorneys was 223 per year. The number of new habeas assignments this Agency has been required to make has continued to increase each year since the legislation took effect. **Based upon the current trend the number of new assignments for FY 15/16 is expected to exceed 700, which is a threefold increase.** Many of these cases result in hearings, trials or other costly and unavoidable litigation. As a consequence, the cost of habeas cases continues to increase each month. **Representation in these cases is also a "core" function of this Agency's responsibility, and the Division has no control over the number of indigent petitioners that must be afforded counsel upon appointment by the court.**

### Child Protection

The Division is experiencing a FY 16 deficiency of \$1.18 million in the Assigned Counsel Account due to the increased number of child protection cases. The cost for representation in child protection (CP) cases has increased due to the growing numbers of cases being filed by the Department of Children and Families (DCF) in the Superior Courts for Juvenile Matters. The Division of Public Defender Services is required to provide counsel in an increasing number of child protection cases for all children, indigent parents, and for any party where the court orders counsel "in the interest of justice" (IOJ). **The Division has no control over the number of cases the Agency receives from the courts and is required to provide representation as a "core" function.** As indicated by the chart below, there were decreased filings from 2012 - 2014. Case assignments in the child protection area continue to be higher than in 2015 but appear to have leveled off.

| Fiscal Year | Child Protection Petitions Added<br>(source: Judicial Branch)[1] |
|-------------|--|
| 2016        | 13,197   |
| 2015        | 10,307   |
| 2014        | 8,364  |
| 2013        | 8,224  |
| 2012        | 8,187  |
| 2011        | 9,454  |

[1] Child Protection is comprised of: neglect, termination of parental rights, revocation of commitment, adoption, reinstatement of parent as guardian and review of permanency cases

In addition, litigation costs have increased, as trends indicate that more child protection matters are being litigated. Therefore, DPDS is incurring costs for each new case which, in addition to the initial fee, also causes increased costs for approved hourly billing events, experts, transcripts, and subsequent appellate legal representation expenses. There have also been a number of extraordinarily complex cases that have resulted in unusually high expenses. We are also experiencing the fiscal impact of the Judicial Department's decision to restrict the work of their interpreters to courtroom translation. Our Agency must now permit attorneys to engage private translators at additional expense to DPDS in order to properly investigate cases, communicate and advise incarcerated non-English or limited English speaking clients. In some cases, DPDS must also pay for and provide translations of court transcripts to non-English speaking clients. In the complex cases, these expenses have been considerable. The state's efforts to increase its collection of outstanding child support obligations through the use of "Capias (arrest) Sweeps" of persons who are delinquent in their support payments has resulted in the need to add additional attorneys assigned to cover these courts.

### **Personal Services**

The Division currently has a deficiency of \$1.65 million in the Personal Services account. This shortfall is result of a Deficit Mitigation cut of \$1.68 million and a programmed lapse reduction of \$562,000. The Agency recognized the magnitude of the projected state budget deficiencies going forward, and that everyone must reduce expenditures in order to ensure the long-term fiscal health of our state. As a result, almost \$600,000 has been saved in the Personal Services account through the freezing of vacancies and delayed hiring of key Agency positions. However, the magnitude of these cuts are simply too large for the Agency to achieve and provide constitutionally mandated services for clients.

### **Controlling Costs**

**The Office of Chief Public Defender has taken action to control costs and to mitigate deficiencies in these Accounts. These actions include:**

- OCPD now uses a "firm model" for representation in Habeas cases. These groups of experienced attorneys can handle and successfully resolve an increased number of habeas cases at a reduced hourly rate (\$65 rather than \$75 per hour). Due to the dramatic increase in the numbers of new cases to which attorneys are appointed, this has resulted in significant savings.

- Implementation of the case assignment/compensation database checks all billing data for each individual assigned counsel attorney against all other billing submissions. This system has completely eliminated the possibility of duplicate billings. The system does the same for expert expenses---I think this was in a prior version.
- Enhance auditing procedures in the new billing system will automatically decline and return bills submitted by assigned counsel if they are found to be non-compliant with billing event restrictions, hourly approval limitations of other issues.
- Subpoena service for CP cases is now handled in-house by public defender staff rather than by marshal services, achieving significant savings.
- Public defender staff attorneys now also handle some of the representation of clients in child protection cases. These clients would have been assigned to contract attorneys in prior years.