



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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TESTIMONY OF JOHN DAY, ACTING CHIEF PUBLIC DEFENDER ON GOVERNOR'S PROPOSED FY 26/27 BUDGET

APPROPRIATIONS COMMITTEE, JUDICIAL & CORRECTIONS SUBCOMMITTEE
February 11, 2025

Mission Statement of the Division of Public Defender Services

Striving to ensure justice and a fair and unbiased system, the Connecticut Division of Public Defender Services zealously promotes and protects the rights, liberty and dignity of all clients entrusted to us. We are committed to holistic representation that recognizes clients as individuals, fosters trust and prevents unnecessary and wrongful convictions.

The Public Defender Services Commission is responsible for:

- Defense of indigent accused children and adults in criminal cases and parole revocation hearings,
- Representation in post-conviction proceedings and appeals in criminal, juvenile, and child protection matters,
- Representation for children and indigent adults in child welfare cases,
- Representation of indigent contemnors and respondents in paternity matters in family magistrate court,
- Appointment of Guardians ad Litem and attorneys for children in Family Court where the family qualifies for state-rates.

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The Governor's FY 26 and FY 27 proposed budget proposed several important and challenging changes to the Public Defender Services Commission (PDS) budget for the upcoming biennium. These include:

1. Reduces the Personal Services account \$3,414,470 and the Assigned Counsel account \$2,900,000 to reflect returning the eligibility threshold from 250% of the federal poverty level (FPL) back to 200% of the FPL;
2. Does not provide requested funding of \$1,302,320 for 20 social worker positions for statutorily mandated child welfare visits;
3. Reduces the Assigned Counsel account \$1,000,000 to reflect anticipated FY 25 expenditures;
4. Reallocates an additional \$805,516 from the Assigned Counsel account to Personal Services to fund 13 staff interpreters;
5. Does not provide requested funding to increase assigned counsel rates; and
6. Provides funding to annualize existing collectively bargained wage agreements.

Eligibility Guidelines

The FY 25 budget for the Public Defender Services Commission provided half-year funding of \$1,450,000 in Personal Services (approximately 40 positions) and another \$1,450,000 in the Assigned Counsel account to support raising the eligibility guidelines for public defender services from 200% of the FPL to 250%. This change was important, as the funding was provided to support an anticipated increase in caseloads associated with increasing the eligibility threshold. As this was half-year funding, it was anticipated that the effective date of this change would be January 1, 2025. After receiving additional guidance on the effective date from Office of Policy and Management (OPM) and Office of Fiscal Analysis (OFA), which was confirmed to be January 1, 2025, the Public Defender Services Commission voted to increase the income eligibility guidelines and instructed management at the Office of Chief Public Defender (OCPD) to begin the process of hiring the necessary positions to support this change. To date, 21 employees have been hired, including 14 new attorneys and 7 support staff. In the fall, a budget request was made to OPM to annualize the costs associated with this change. This request included \$1,450,000 in each of the Personal Services (PS) and Assigned Counsel accounts in addition to \$514,470 in PS to reflect increased starting attorney salaries that were collectively bargained in FY 24. The Governor's budget proposal would eliminate the total annualized funding for this, which, if adopted by the General Assembly, would jeopardize the positions that the Commission has hired. Cost reduction measures would be required, including a hard hiring freeze and potential layoffs in order to avoid a large deficiency in PS. We request the Committee restore the funding for the increased eligibility guidelines so our Agency can continue to provide representation to the indigent population of CT.

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Social Worker Request

The Office of the Child Advocate's (OCA) recent Liam R. Fatality Investigation Findings and Recommendations report found that OCPD Assigned Counsel failed to meet child welfare visit and record request standards required in accordance with OCPD performance guidelines. OCA's findings and the subsequent legislative changes require this agency to provide Assigned Counsel with the support necessary to adhere to legal and contractual obligations in representing Connecticut's most vulnerable children.

In response, OCPD developed an emergency action plan to hire 20 social workers to support assigned counsel with child welfare visits and record requests. These social workers will conduct up to half of all child visits, collect and interpret records, and provide assigned counsel with their professional perspective to assist in determining the needs of child clients.

The increased cost of \$1.3 million will ensure that this agency meets the statutory and contractual obligations necessary to effectively represent children who are the subject of abuse, neglect, and uncared for petitions.

Assigned Counsel Accounts Cuts, Reallocations

The Governor's budget proposed reducing the Assigned Counsel account \$1 million to reflect FY 25 anticipated expenditure levels. Recent PDS budget projections do in fact reflect about a \$1 million surplus in this account. However, the Governor's budget also proposed a reallocation of \$805,516 from Assigned Counsel to PS to fund 13 new interpreter positions. In addition, a back-of-the-budget Judicial Branch lapse of \$5 million for FY 26/27 (PDS anticipates about a \$632,000 reduction from this lapse) would further reduce the Assigned Counsel account in the upcoming biennium. These three budgetary changes in the account would result in a FY 26 deficiency in the Assigned Counsel appropriation. The Agency requests the restoration of this \$1 million reduction to avoid the deficiency.

The Governor's budget does include a previously mentioned reallocation of \$805,516 from Assigned Counsel to PS to fund 13 new interpreter positions in the courts. Years prior to the pandemic, the court-based public defender staff (GA, JD, Juvenile) had access to interpreters assigned to their particular location where they were handling a daily docket. This has changed dramatically over time, and now those interpreters assigned to the court locations are there for in-court proceedings only. In recent years OCPD has paid and continues to pay for this service on an hourly basis. While this does assist the staff, it must be scheduled in advance. Consequently, clients that are appearing for the first time or making an office visit present a communication challenge. This results in delays that directly impact the length of time cases remain open. There are 13 Judicial Districts in this state. Employing a single interpreter for

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each district will allow all offices served to have access to this service. Coordinating this resource through a computer-based scheduling system will maximize their utility and expedite the movement of cases. The Agency supports the Governor's recommendation as long as it is not coupled with the previously mentioned \$1 million reduction to the Assigned Counsel account. Providing funding for interpreters is a vital resource to eliminate language barriers and ensure competent representation for indigent clients as well as avoid the burden of continuances and other delays currently plaguing the courts.

Assigned Counsel Rate Increase Request

The Division and assigned counsel are very grateful for the recent partial increases and funding in the FY 25 budget that allowed for pay rates of \$88 and \$102 per hour and equivalent flat rates. While these increases have helped, the current rates remain too low and may result in difficulties retaining and attracting qualified attorneys. Also, these rates continue to be demonstrably lower than other states, including our sister state of New York (\$158 per hour), and lower than Connecticut Federal assigned counsel criminal pay (\$175 per hour.)

The Agency submitted a budget request of \$3,570,478 in each of FY 26, FY 27 and FY 28 for a total request of \$10,711,434 to ultimately reach hourly rates of \$120 and \$135, rates originally requested in October 2022. This request was made as part of a three-year plan to increase assigned counsel rates in order to lessen the initial budget burden.

Attorneys continue to decline case assignments. Assigned counsel are stretched thin, contracting for more courts and cases. It takes longer to find qualified attorneys who will accept cases, particularly in juvenile delinquency, and we have had to go out of rotations more frequently, making our attorneys less available both to their contract location and generally. Also, training attorneys new to our list is more expensive. Judges have expressed concern that there are not enough assigned counsel available in some court locations, and at times justice is delayed as counsel assignments take longer. In more remote, less populated court locations, we consistently have fewer attorneys available to take cases, causing disparate difficulty assigning clients in those locations.

While we have had new attorneys apply for contracts, we are not attracting the type of experienced attorneys that we have lost and continue to lose. We are not close to the number of attorneys we have had on our list in the past when we did not have these problems. Notably, fewer child protection attorneys means fewer attorneys handling more cases, resulting in a diminished ability to provide child client visits, a key component to representation, among other issues. Increases in assigned counsel rates are directly related to quality and availability of representation.

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In conclusion, the increases in hourly pay requested are modest and would allow the assigned counsel unit to provide consistent, effective representation for our clients.

Annualization of Existing Wage Agreements

The Governor's FY 26/27 budget also includes a total of \$4,159,385 to annualize existing collectively bargained wage agreements. This includes \$2,141,078 to annualize FY 24 attorney parity wage increases, which were negotiated between the public defender attorney union and agency management in order to bring the attorney salary schedule back into parity with the Division of Criminal Justice. We support these important annualizations, as they fund the current services of the agency going forward into the next biennium.

Conclusion

As the "Constitution State," Connecticut has always taken great pride in a criminal justice and child welfare system that ensures fairness, just results, and public safety. These results cannot be accomplished or continued without sufficient and balanced funding among all criminal justice stakeholders. This Agency is respectfully requesting the Appropriations Committee provide sufficient funding to implement the assigned counsel rate increase, recommend the reallocation request in order to address concerns regarding representation of child clients, and increase the agency's authorized position count in order to hire already funded positions.