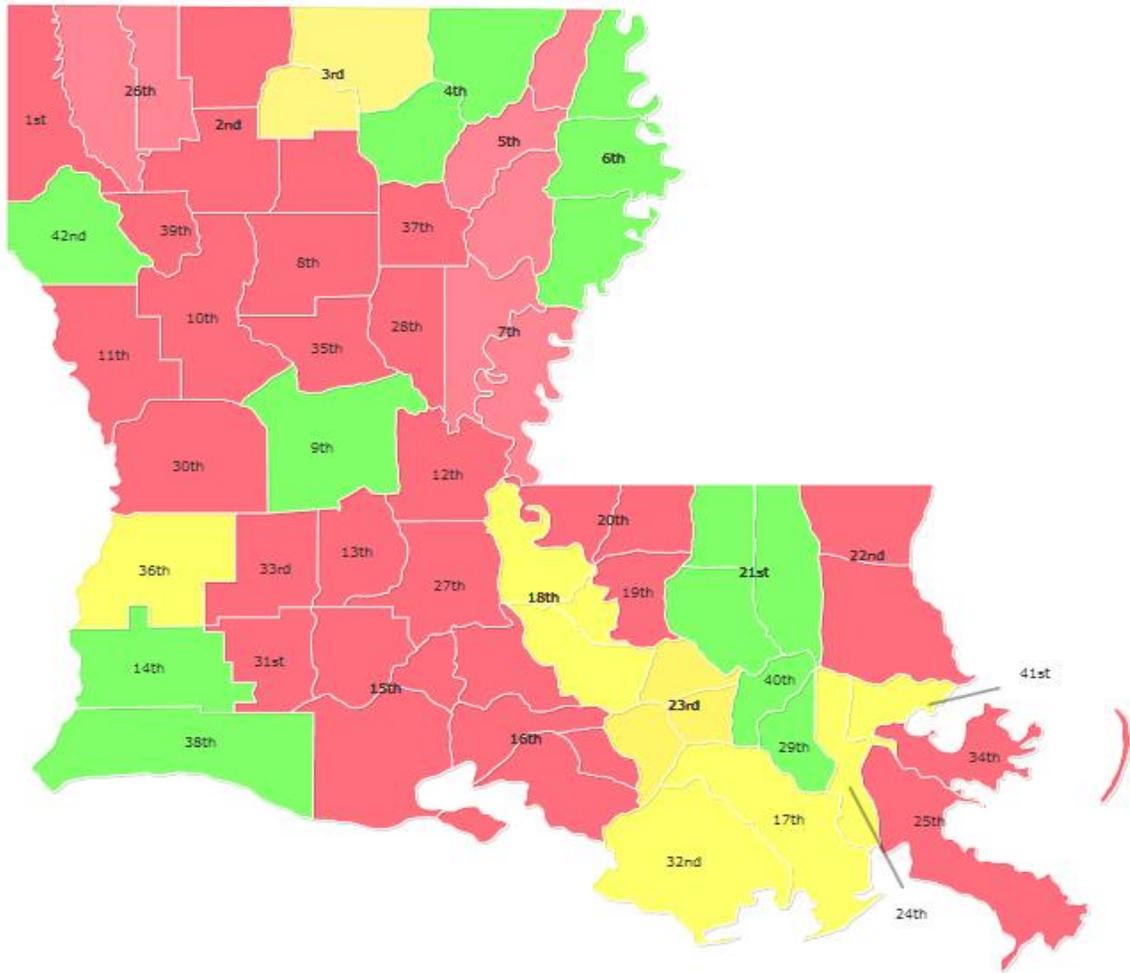


# CRIMINAL JUSTICE SYSTEM AT A CROSSROADS



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## MESSAGE FROM THE STATE PUBLIC DEFENDER –

**JAMES T. DIXON, JR.**

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Since the formation of the Louisiana Public Defender Board (LPDB), great strides have been made in public defense. Caseloads have been reduced, standards have been promulgated, and the quality of representation has improved throughout the state. The fiscal crisis which will occur within the next two years threatens public safety as well as the advances that have been made in public defense.

When LPDB was formed, there were a number of districts which held fund balances. Due to inadequate funding and reliance on an unstable local funding stream, heavily dependent on special court costs, districts have relied on these fund balances to keep the system afloat. Many of these funds have been depleted and most of those that still remain are rapidly being depleted. By the end of July 2016, LPDB expects that no less than 24 of the state's 42 judicial districts will become insolvent and enter restriction of services. These districts include rural districts as well as major population centers such as Bossier Parish, East Baton Rouge Parish, Jefferson Parish, Lafayette Parish, Orleans Parish, and St. Tammany Parish.

Failure of the public defense system will come with severe societal and financial costs that will be felt by the entire state. Service restriction will slow down the judicial system as district offices in insolvent districts will be forced to lay off attorneys leaving the remaining attorneys to assume their caseloads. Rising caseloads will require district offices to conform to Louisiana and United States Constitutional requirements for the effective assistance of counsel, by refusing new cases as the remaining attorneys absorb their colleagues' caseloads thereby precipitously raising caseloads to unmanageable levels. As districts enter restriction of services court dockets will slow down as private attorneys, many of whom will have had little or no experience and inadequate training in criminal defense law, must be appointed to cases on a pro-bono basis. Reliance on overworked and under-trained counsel will likely lead to an increase in the incarceration rate, adding to the financial strain placed on Louisiana's prison system which already boasts the highest incarceration rate in the World.

Further, we can expect litigation throughout the state in the form of ineffective assistance of counsel claims, suits from private counsel seeking relief from appointments in criminal cases without pay, and federal claims arising from the collapse of constitutionally mandated representation of the indigent in criminal matters.

Working with all Louisiana stakeholders, we can and must find a solution to this crisis.

Sincerely,

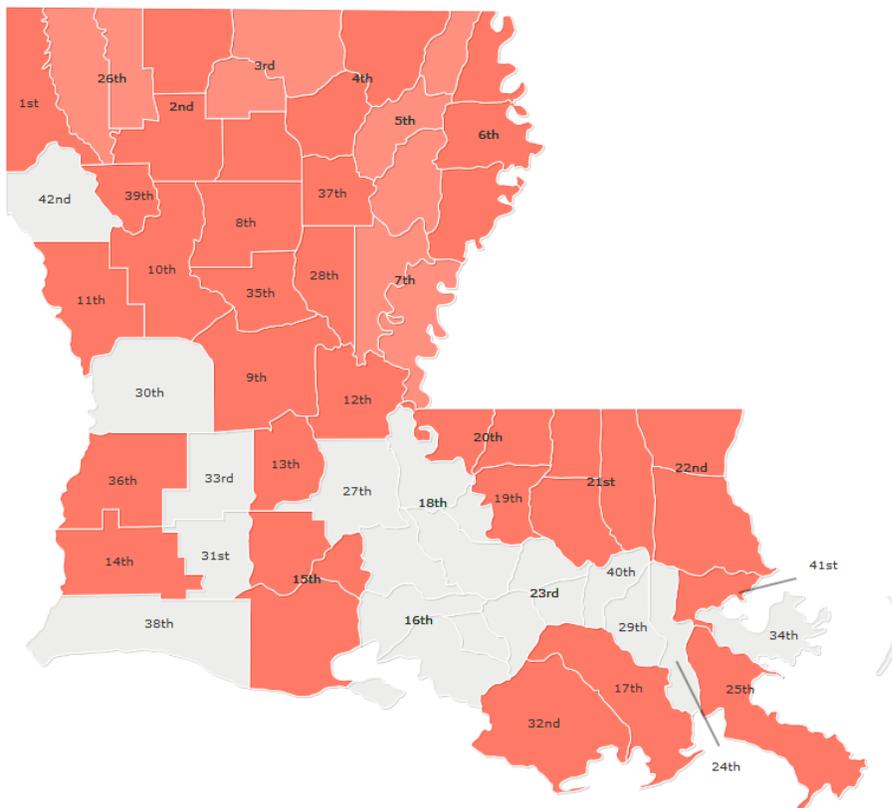
James T. Dixon, Jr.  
State Public Defender

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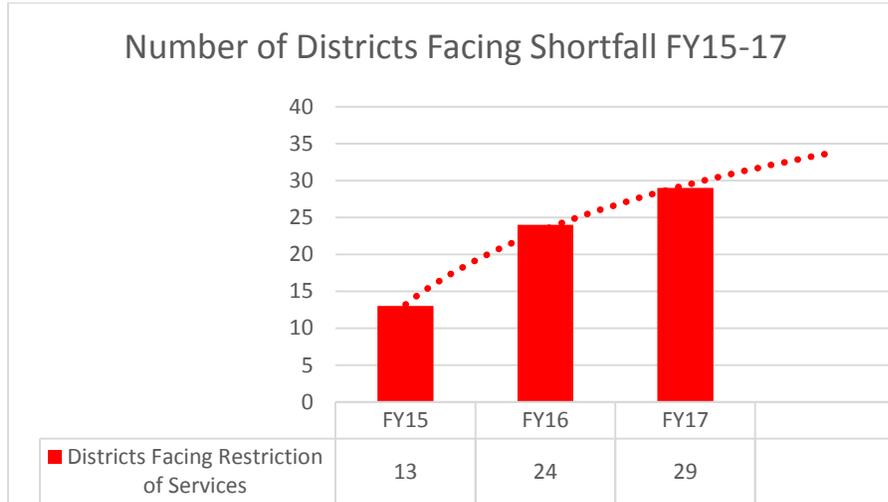
# CRIMINAL JUSTICE SYSTEM IN CRISIS

Louisiana's public defense system is a critical component of the criminal justice system, protecting public safety by preventing wrongful convictions and protecting due process and constitutional rights. The Louisiana Public Defender Board (LPDB) was created by the Legislature in 2007 as a representation of the State's commitment to the pursuit of equal justice for all of Louisiana's citizens regardless of income. Policies and procedures implemented by LPDB have resulted in increased supervision and training, standards and guidelines, as well as improved client representation and outcomes. The public defense system has been persistently underfunded since its inception, due to reliance on unstable revenues requiring the assessment, collection, and dispersal of fines associated with traffic tickets and court costs for survival. As shown in the map below, as of August 2014, policies and procedures implemented by LPDB designed to increase efficiency, increase revenues, and decrease expenditures have prevented financial disaster in 29 of the state's 42 Public Defender Offices (districts in red) at least once between 2010 and 2014. Public Defender Offices have no control over these revenue streams, their collection, or disbursement. Thus, continued instability of revenues places the entire system at risk, jeopardizing public safety. Without sufficient resources necessary to provide the constitutionally guaranteed right to counsel for the more than 240,000 cases represented by public defenders each year, many districts will be required to begin restriction of services and potentially grinding the entire criminal justice system to a halt.



Source: LPDB Database, September 2014

# RESTRICTION OF SERVICES



Source: LPDB Database, September 2014

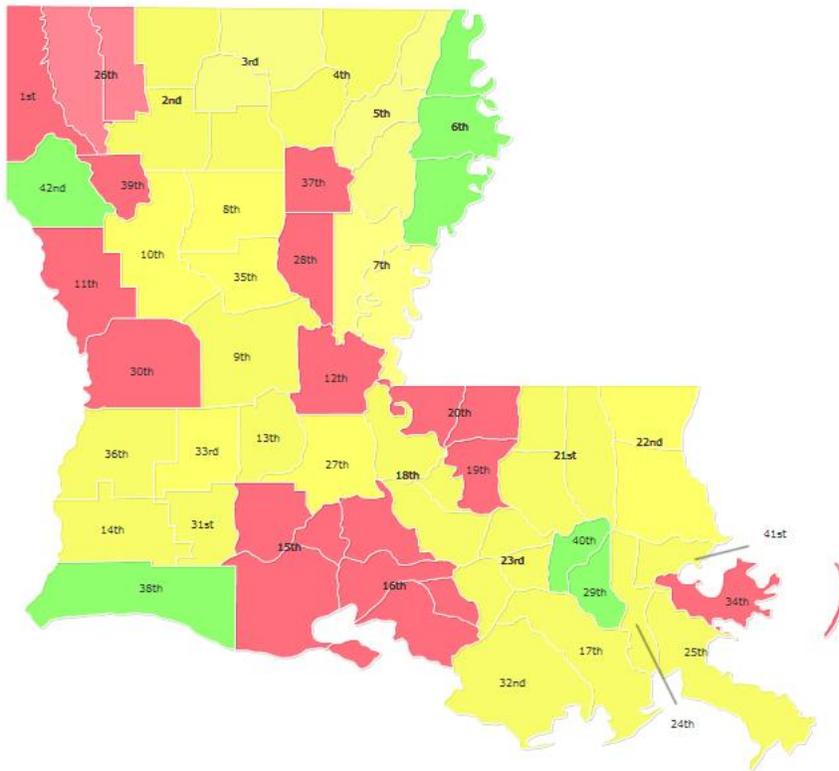
As expenditures exceed revenues, district public defense offices will be required to lay off attorneys, causing caseloads to rise. To conform to the Louisiana Rules of Professional Conduct and adhere to Louisiana and United States Constitutional requirements for the effective assistance of counsel, district offices will be required to refuse new cases as the remaining lawyers absorb their colleagues' caseloads thereby precipitously raising caseloads to unmanageable levels. Once attorneys are no longer able to accept new cases the districts must begin restricting services.

## DURING SERVICE RESTRICTION

- District offices **MUST** stop accepting new cases to prevent attorney caseloads from rising so far that attorneys are no longer able to meet Louisiana and United States requirements for the effective assistance of counsel.
- New cases will be assigned to the private bar or be placed on waitlists.
- The use of waitlists or assignments to the private bar will slow down court dockets in many areas, threatening public safety and jeopardizing justice for crime victims and their families.
- Clients will, in many cases, be represented by attorneys who do not specialize in criminal defense, potentially increasing the rates of ineffective assistance of counsel claims as well as increasing the risk of wrongful convictions which threaten public safety.
- Litigation will arise from private attorneys contesting their appointment to criminal cases without pay, as an unconstitutional taking.
- Increased risk for federal interference and litigation.

# FY15 OUTLOOK

Since the inception of LPDB, on a statewide level, sufficient revenues to meet the expenditures necessary for the compliant representation of eligible clients have never materialized. In the past, a greater number of districts accrued fund balances and had the ability to bail out the shortfall districts which only required a small amount of additional revenue to remain solvent. However during FY15, the remaining accruing (green) districts do not receive sufficient state funding to bail out the shortfall (red) districts who have exhausted their fund balances. This rapid insolvency among smaller districts as well as larger districts including, the 1<sup>st</sup> (Caddo Parish), 15<sup>th</sup> (Acadia, Lafayette, and Vermillion Parishes), 16<sup>th</sup> (Iberia, St. Martin, and St. Mary Parishes), 19<sup>th</sup> (East Baton Rouge Parish), and the 26<sup>th</sup> (Bossier and Webster Parishes) may cause restriction of services in several parts of the state. These estimates are based on LPDB’s projection that the 1<sup>st</sup> Judicial District’s Public Defenders Office will face a significant deficit and become insolvent in May 2015. If the 1<sup>st</sup> Judicial District Office is able to remain solvent, LPDB may be able to take additional measures to prevent insolvency in the remaining shortfall districts. However, this is merely a short term solution as without increased revenues, restriction of services is inevitable. As shown in the map below, without aggressive intervention the red districts are facing a shortfall and insolvency within fiscal year 15. Yellow districts are depleting their fund balances and many will become insolvent in the next fiscal year, while green districts are accruing revenues.



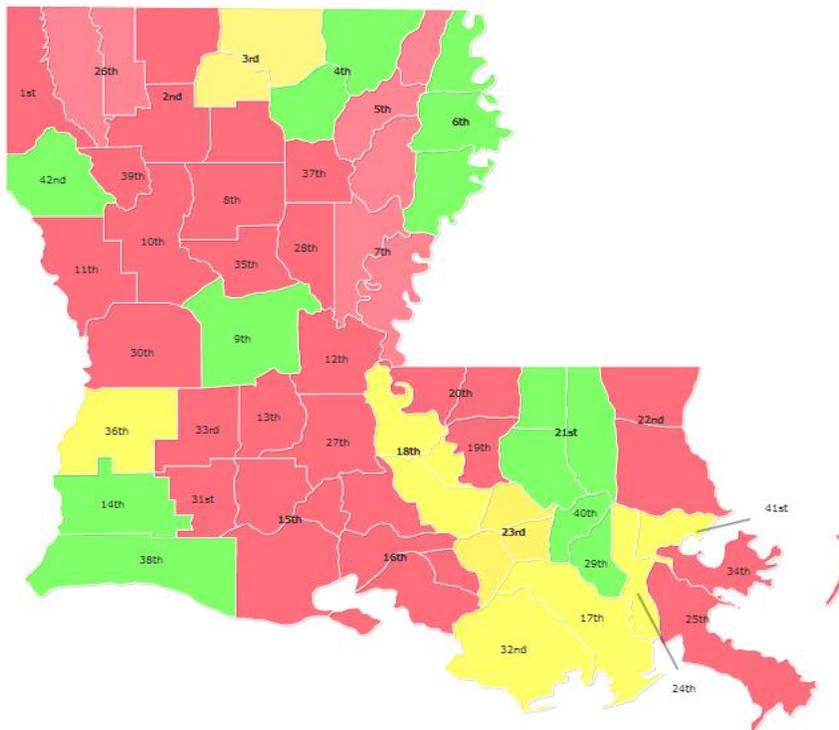
<u>District</u>	<u>Insolvency Date</u>
<b>1</b>	<b>May 2015</b>
<b>26</b>	<b>May 2015</b>
34	May 2015
12	June 2015
<b>15</b>	<b>June 2015</b>
<b>16</b>	<b>June 2015</b>
<b>19</b>	<b>June 2015</b>
20	June 2015
28	June 2015
30	June 2015
37	June 2015
39	June 2015

Source: LPDB Database, September 2014

Notes: (1) The 11<sup>th</sup> PDO has entered into a cooperative endeavor agreement with the 42<sup>nd</sup> PDO, whereby the 42<sup>nd</sup> PDO covers the gap between the 11<sup>th</sup> district’s expenditures and revenues. (2) The 7<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 22<sup>nd</sup>, 27<sup>th</sup>, 33<sup>rd</sup>, and 35<sup>th</sup> districts are expected to become insolvent very early in FY16, prior to distribution of the FY16 appropriations.

# FY16 OUTLOOK

After FY15, LPDB will be forced to abandon the DAF adjustment formula as districts continue to exhaust their fund balances becoming insolvent. Meanwhile, revenue accruals available for adjustment drastically decline and are insufficient to meet the needs of the shortfall districts. Elimination of the adjustment formula will be necessary in FY16 to protect the long-term viability of the remaining accruing (green) districts. The map below of FY16 represents a best case scenario wherein a minimum of twenty-five (25) public defender district offices across the state, including the 22<sup>nd</sup> district (St. Tammany and Washington Parishes) are expected to become insolvent and forced to call upon the private bar during service restriction. The FY15 and FY16 projections demonstrate the instability of the public defense system; as districts become insolvent, in particular the larger districts, the pace with which districts become insolvent begins to quicken.

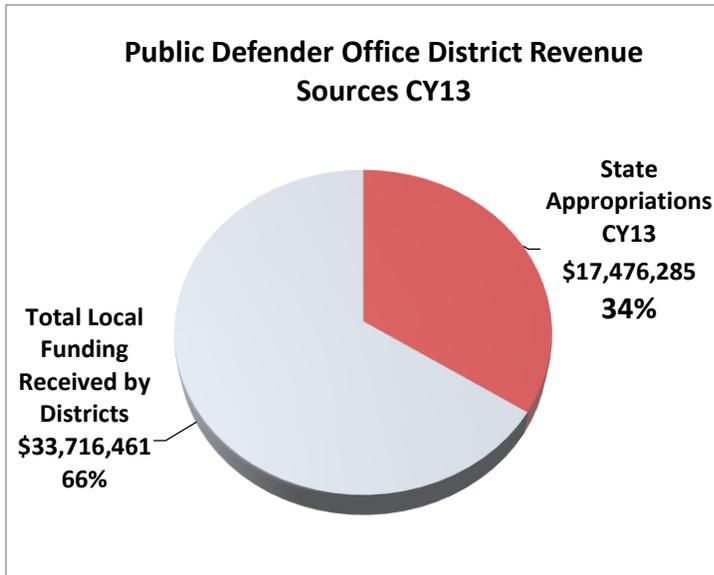


<u>District</u>	<u>Insolvency Date</u>
<b>1</b>	<b>FY15</b>
<b>15</b>	<b>FY15</b>
<b>16</b>	<b>FY15</b>
<b>19</b>	<b>FY15</b>
<b>20</b>	<b>FY15</b>
<b>26</b>	<b>FY15</b>
<b>28</b>	<b>FY15</b>
<b>34</b>	<b>FY15</b>
<b>37</b>	<b>FY15</b>
<b>39</b>	<b>FY15</b>
<b>12</b>	<b>FY15</b>
<b>30</b>	<b>FY15</b>
<b>8</b>	<b>December 2015</b>
<b>33</b>	<b>December 2015</b>
<b>7</b>	<b>January 2016</b>
<b>35</b>	<b>January 2016</b>
<b>10</b>	<b>February 2016</b>
<b>13</b>	<b>February 2016</b>
<b>25</b>	<b>February 2016</b>
<b>27</b>	<b>February 2016</b>
<b>2</b>	<b>March 2016</b>
<b>31</b>	<b>April 2016</b>
<b>5</b>	<b>May 2016</b>
<b>22</b>	<b>May 2016</b>

Source: LPDB Database, September 2014

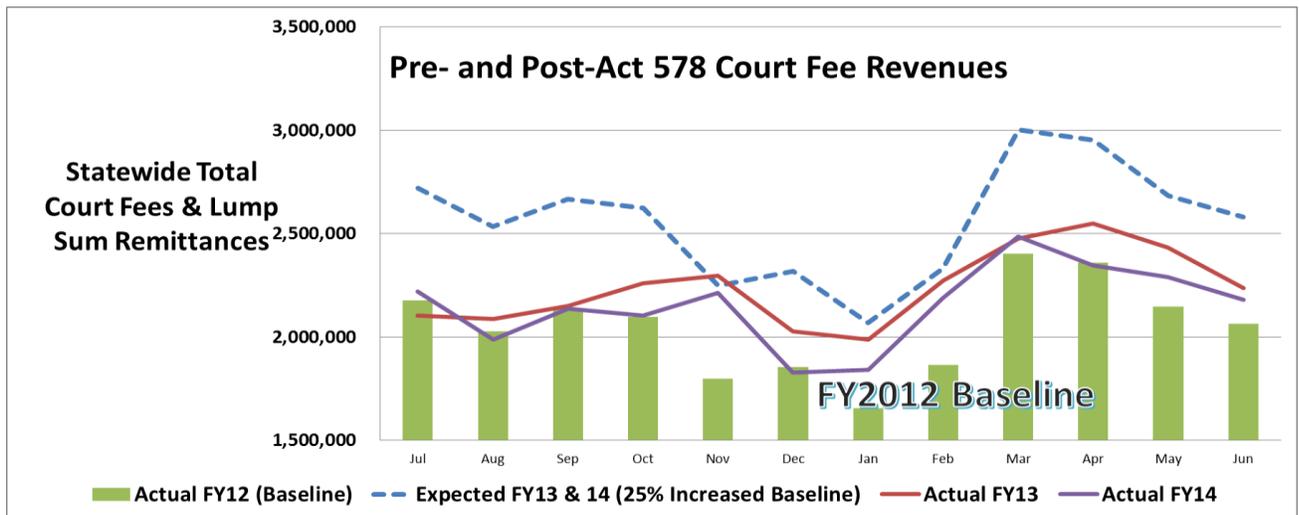
Notes: (1) The 11<sup>th</sup> PDO has entered into a cooperative endeavor agreement with the 42<sup>nd</sup> PDO, whereby the 42<sup>nd</sup> PDO covers the gap between the 11<sup>th</sup> district's expenditures and revenues. (2) The 3<sup>rd</sup> and 23<sup>rd</sup> districts are expected to become insolvent very early in FY17, prior to distribution of the FY17 appropriations.

# REVENUES



Unlike most state agencies, LPDB has not experienced any cuts to its budget. However, despite stable state appropriations, public defenders are still overwhelmingly dependent on local funding streams. Reliance on local funding is a dangerous and untenable practice as local funds are unstable because they are primarily derived from fines associated with traffic violations and convictions. Many districts lack adequate funding due to a decrease in traffic tickets being written, the clients' inability to pay court costs and application fees, an increase in the use of diversion programs, or a combination thereof.

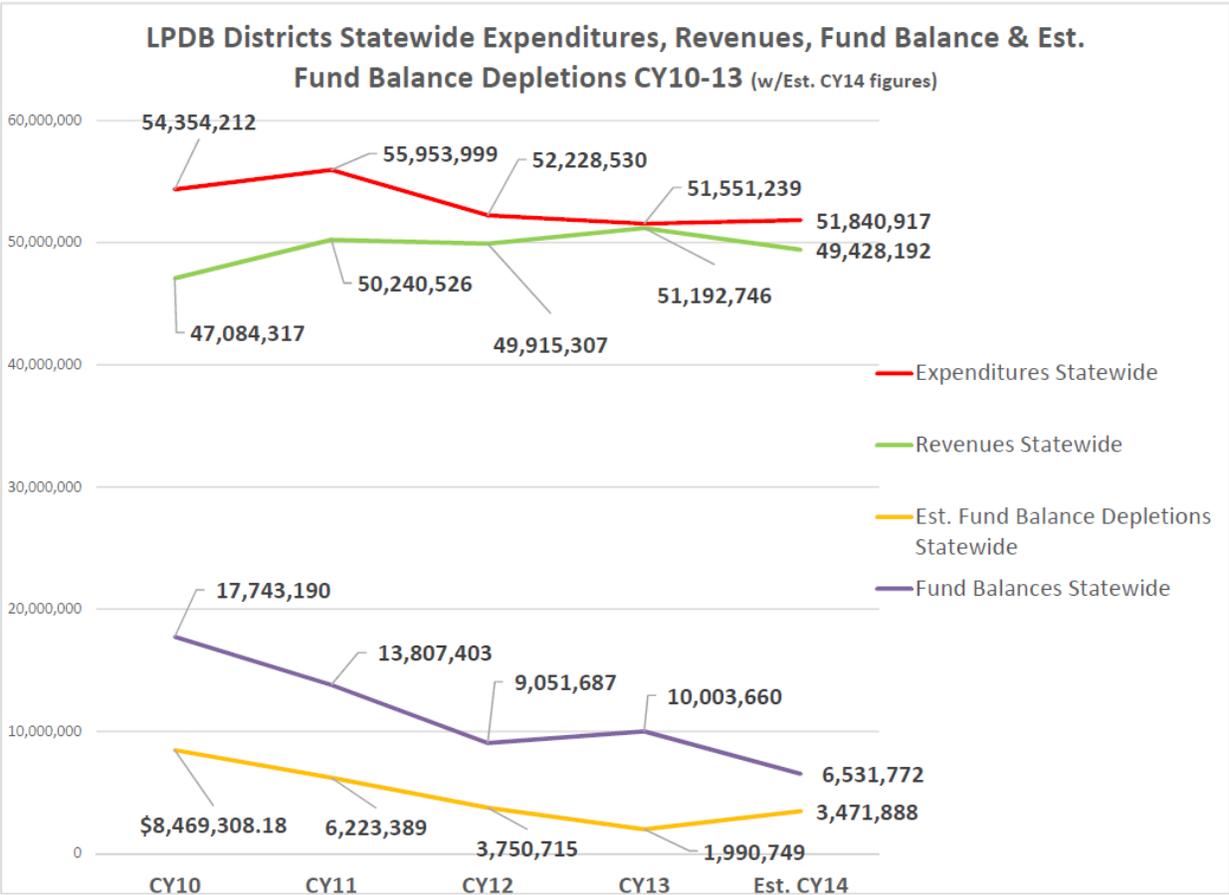
Source: LPDB Database, September 2014



Additionally, revenues that were expected to be generated by Act 578 of the 2012 Regular Legislative Session, which increased court costs from \$35 to \$45 for four years (increase will sunset August 1, 2016), have not materialized in many districts. As shown above during the two fiscal years since Act 578 was enacted, districts have generally struggled to maintain FY12 baseline revenues and have certainly fallen short of the 25% increase in revenue that Act 578 was projected to achieve. Based on FY12 baseline revenues of \$24.5 million, after the \$10 increase, districts were expected to receive approximately \$30,700,000 statewide in FY13. However districts only received \$26.8 million, \$3.9 million less than was projected. In FY14, districts only received \$25.8 million, a mere 5% increase in funding and \$4.9 million less than what was projected to materialize through Act 578.

# EXPENDITURES

Public Defender Offices have answered the call to reduce expenditures, however reliance on an unstable funding stream based primarily on traffic tickets and court fees from convictions has caused many districts to deplete their fund balances to avoid restriction of services. Statewide, districts expended roughly \$11,000,000 of their fund balances between CY10 and CY13. Districts are expected to spend an additional \$3,000,000 of their existing fund balances during CY14. This practice is not sustainable as within approximately two years the vast majority of districts will have no fund balance upon which to rely.



Source: LPDB Database, September 2014

2013 CASELOAD SNAPSHOT

**247,828** TOTAL CASES

ADULT FELONY

**93,384**

CHILD IN NEED OF CARE

**8,246**

ADULT MISDEMEANOR\*

**109,175**

JUVENILE

**20,423**

REVOICATIONS

**11,020**

CAPITAL

**99**

LIFE WITHOUT PAROLE

**1,465**

OTHER LEGAL SERVICES\*\*

**4,016**



LPDB represents more than 85% of defendants charged with a criminal offense in Louisiana

Source: LPDB Database, September 2014.

\* Adult misdemeanor includes traffic, parish/municipal ordinances, extraditions, & unclassified.

\*\* Other legal services include post-conviction relief, Sex Offender Assessment Panels, & child support.

# EXONERATIONS



In 1986, Anthony Johnson was convicted of the 1984 stabbing death of his girlfriend. His conviction came as a result of police withholding key information, now-discredited forensic testimony, an alleged statement by Mr. Johnson, and an ineffective lawyer. Through the work of Innocence Project New Orleans, a not-for-profit program funded in part by LPDB, DNA testing was conducted excluding Mr. Johnson as the perpetrator. This information was consistent with additional evidence implicating a serial killer, who was known to the police at the time of Mr. Johnson’s trial. The serial killer went on to kill two others and later bragged about committing the murder for which Mr. Johnson spent more than two decades in prison.

Source: Innocence Project New Orleans

Mr. Johnson was officially exonerated on September 15, 2010, 26 years after his arrest.

Since 1991, there have been 52 exonerations in Louisiana. Not only does Louisiana have the highest incarceration rate in the World, Louisiana also has the distinction of having the highest exoneration rate in the United States (Source: Prison Policy Initiative). LPDB did not exist at the time of Anthony Johnson’s wrongful conviction; however, this case is a perfect testament as to why LPDB exists today. Wrongful convictions are not merely a tragic injustice to the accused; but an injustice to the victim, the victim’s family, and a community that is left vulnerable to further violence while the real perpetrator remains at large.

## CAPITAL – DEATH ROW

<u>EXONERATIONS</u>
<b>10</b>
<u>TOTAL YEARS TRUE PERPETRATOR PLACED PUBLIC AT RISK</u>
<b>125</b>
<u>INCARCERATION COSTS</u>
<b>\$55.68/day* for 125 years = \$2,540,400</b>

## NON-CAPITAL

<u>EXONERATIONS</u>
<b>42</b>
<u>TOTAL YEARS TRUE PERPETRATOR PLACED PUBLIC AT RISK</u>
<b>705</b>
<u>INCARCERATION COSTS</u>
<b>\$36.59/day** for 705 years = \$9,415,521.75</b>

## FINANCIAL REMUNERATION

<u>SIGNED JUDGMENTS</u>
<b>\$7,040,477</b> (only 25 exonerees awarded thus far)

\* Source: DPS&C self-reported FY13 daily average

\*\* Source: DPS&C self-reported FY13 Louisiana State Penitentiary (Angola) daily average

# ACT 307

Act 307 of the 2007 Regular Legislative Session dissolved all local district public defender boards and transferred supervision and oversight of the local offices to the newly created Louisiana Public Defender Board (LPDB). The primary difference between the provision of representation for eligible clients before and after Act 307 is LPDB's creation of uniform performance standards and guidelines for representation of indigents and involvement in the oversight and supervision of the local offices and 501(c)3 not-for-profit corporations.

## Indigent Representation

District Defender Appointment

District Assistance Fund (DAF)

Database

Standards for Client Representation

Training

Client Complaint Policy

Site Visits

## Pre Act 307

Appointment practices varied from district to district.

Funding formula was based on inaccurate data, it failed to adequately reflect district needs allowing districts to utilize state funds while accruing local funds.

Poor data entry compliance with limited reporting.

Developed but not promulgated or implemented.

No formal training provided to public defenders.

No client complaint policy for public defender clients.

No systematic plan for supervision of the districts.

## **Post Act 307**

District Defenders are appointed using a best practice model with local stakeholder input.

Development of an improved, more accurate formula that projects each district's expenditures based on the preceding year's financial data; locally generated revenues are then deducted from projected expenditures to determine the amount of state funds that are needed by a district to cover expenditures based on the district's caseload.

Creation of a new Case Management System which has improved data entry compliance and more accurate caseload, workload, and outcome data.

Trial Court Performance Standards promulgated for representation of adult clients, parents in Child in Need of Care cases, and children in Delinquency cases; Capital Defense Guidelines, promulgated; Capital Performance Standards, drafted awaiting promulgation.

LPDB has developed and offers no less than six annual trainings, including training for investigators, juvenile defenders, capital defenders, leadership training, training for new defenders, and legislative updates.

Formal client complaint policy developed and implemented in all district and program offices.

Formal site visit protocol created and implemented statewide to provide systemic supervision of the districts.

# LPDB IMPROVING QUALITY

Since its inception in 2007, LPDB has continually strived to improve the quality of representation provided in the more than 247,000 cases that are represented by public defenders each year. Supervision, adherence to standards of representation, and training are the cornerstones which lead to improved outcomes for clients.

## SUPERVISION

- Statewide database is the most expansive, real-time criminal justice data reporting tool available in the state capturing case data from arrest through disposition.
- Required annual reporting by all districts.
- Implementation of site visit protocol ensuring adherence to standards.
- Implementation of Community Oriented Defense model which incorporates resources and tools to create engagement between the community and defenders.

## ADHERENCE TO STANDARDS

- Trial Court Performance Standards for Representation of Adult Clients, promulgated.
- Trial Court Performance Standards for Parents in Child in Need of Care Cases, promulgated.
- Trial Court Performance Standards for Children in Delinquency Cases Detention through Adjudication, promulgated.
- Trial Court Performance Standards for Children in Delinquency Cases Post-Adjudication, promulgated.
- Capital Defense Guidelines, promulgated.
- Capital Performance Standards, awaiting promulgation.

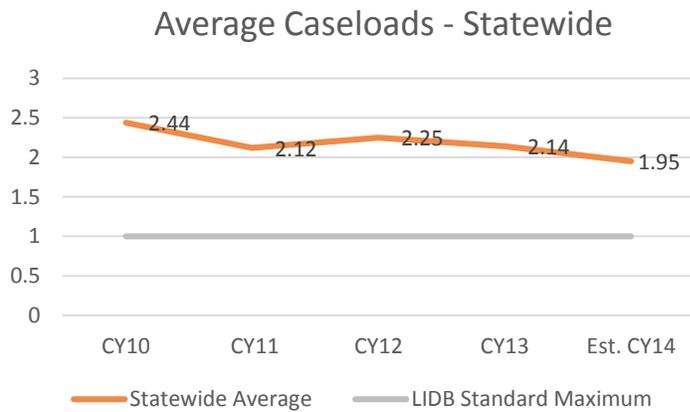
## TRAINING - LPDB offers, for free to attorneys representing indigent clients, the most comprehensive and accessible defense attorney training program in the state

- Defender Leadership Training
- Defender Training Institute
- Capital Defender Training
- Juvenile Defender Training
- Investigator Workshop
- Legislative Update
- Regional Trainings

## OUTCOMES

- Decrease in attorney caseloads.
- Improved representation in post conviction, juvenile, Child in Need of Care (CINC), and adult criminal court representation and advocacy.
- Improved outcomes in adult criminal prosecutions.
- Improved outcomes in CINC proceedings.
- Provide capital representation in a fiscally responsible manner through regional program offices.
- Regional approach to capital representation relieves district offices of the workload and financial burdens associated with capital cases, allowing local resources to be utilized locally for other case types.

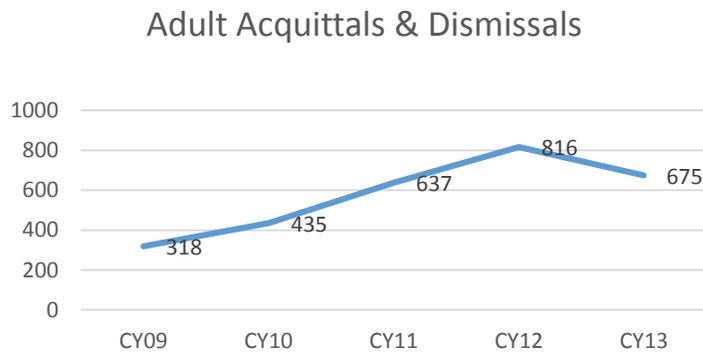
# IMPROVING REPRESENTATION



Public defenders have traditionally maintained excessive caseloads. However, over the previous five years, public defender caseloads have been reduced by 20%. This reduction in cases can be attributed to increased training and oversight.

Source: LPDB Database, September 2014

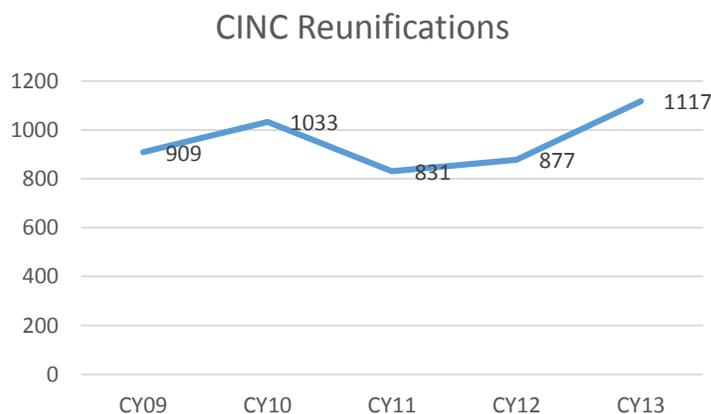
Note: CY14 estimates based on January – July 2014 data; LIDB compliant caseload = 1.0



Since 2009, as the standards of representation have been implemented and the defender training curriculum has been created, criminal acquittals and dismissals have significantly increased.

Source: LPDB Database, September 2014

Note: Includes Judge and jury acquittals as well as Judge dismissals.



Public defense attorneys began representing parents in CINC cases in 2010. Since that time, through training and promulgation of standards for representation, public defense attorneys have significantly improved representation of parents involved in the child welfare system.

Source: LPDB Database, September 2014

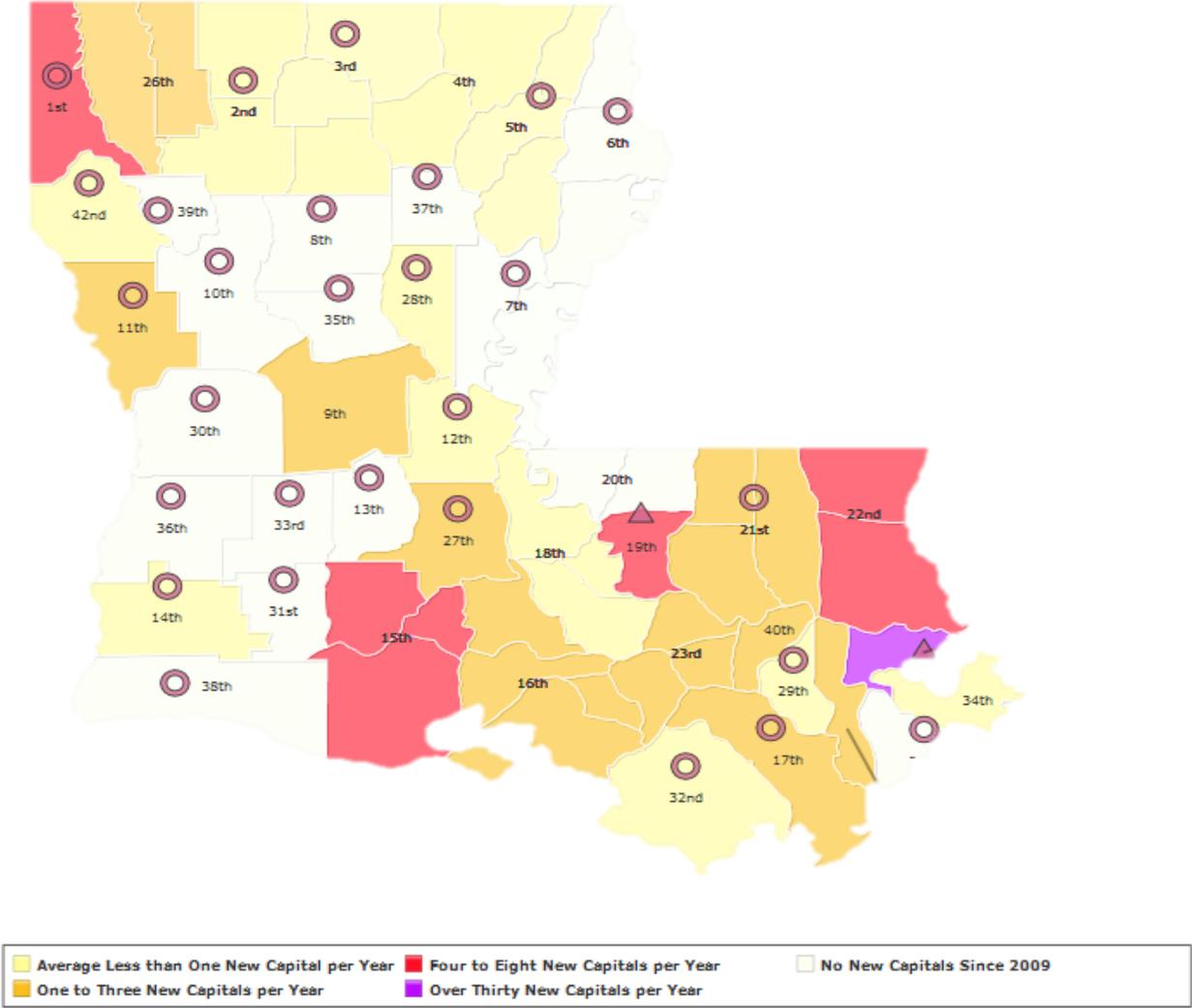
# CAPITAL DEFENSE REPRESENTATION

LPDB contracts with not-for-profit law offices to provide qualified, competent capital counsel across the state to indigent clients in a fair and cost-effective fashion.

## **Importance of Contract Programs**

- The vast majority of capital prosecutions occur in a small number of districts.
- It is not economically feasible for the majority of the state's 42 judicial districts to maintain the staffing capacity necessary for capital cases.
- Even in the larger districts, the economic pressure of cases involving conflicts of interest creates a need for an alternative source of capital counsel.
- Contract programs provide LPDB with flexibility to place qualified capital counsel in cases across the state as needed by offering a regionalized approach to capital defense in areas of the state where capital cases are infrequent or where conflicts of interest are common.
- Contract programs relieve district offices of the workload intensity and economic burden associated with a capital case by handling those cases on behalf of the district.
- As shown on the opposite page, without contract programs, capital cases cannot be tried in 28 of the state's 42 judicial districts due to a lack of capitally certified attorneys or funding to support capital services.
- Even in districts reporting the ability to try capital cases, one high-profile crime having multiple defendants can completely deplete the district's resources.

# CRIMINAL JUSTICE SYSTEM’S RELIANCE ON PROGRAM OFFICES FOR CAPITAL PROSECUTION



Source: LPDB Database, September 2014

Note: ○ District reliant on program offices to proceed with defense of capital cases

▲ District partially reliant on program offices to proceed with defense of capital cases

# CAPITAL EXPENDITURES & OUTCOMES

## Costs associated with capital representation

- LPDB spends approximately \$10 million on capital case funding:
  - Trial level capital representation through contracts to the program offices
  - Expert Witness Funds
  - Capital appellate representation
  - Post-conviction representation through contracts
- Suggestions that the program offices are too expensive are belied by:
  - Low hourly rates for the services provided through the program offices
  - Where these offices invest more staff resources in a particular case they receive no additional funding and nevertheless maintain caseloads at or above LPDB standards
- By contracting with these programs for capital representation services, LPDB saves between \$692,719 and \$3,189,349 per year

## Compensation Comparison (Average Hourly Rates as of July 2014)

	Contract Offices	LPDB Approved Rate	Federal CJA	AG
Lead Counsel	\$85	\$85-110	\$180	\$175
Associate Counsel	\$61	\$75-85	\$180	\$150
Mitigation Specialist	\$49	\$35-100	\$85	N/A
Investigator	\$42	\$35-75	\$50-75	N/A

## Outcomes

- Death penalty cases typically take several years to reach completion, however as shown in the table below recent data shows better outcomes among the program offices
- Among cases eligible for the death penalty, 87.5% of clients defended by district offices were either found or pled guilty to 1<sup>st</sup> degree murder, compared to 60% in program offices
- Among the total number of cases eligible for the death penalty, 60% of clients defended by district offices were sentenced to death, compared to 26.67% in program offices

## Outcomes Comparison among Death Penalty Eligible Cases

	1 <sup>st</sup> Degree/Death	1 <sup>st</sup> Degree/Life	Pled to Lesser	NG/NGRI/Hung	Total
District Offices	19	9	2	2	32
Program Offices	8	10	9	3	30

Note: “NG” means Not Guilty; “NGRI” means Not Guilty by Reason of Insanity”; “Hung” means that the jury was unable to agree on a verdict.

Verdict Date Timeframe - 2003 to June 2014

# AVOIDING SYSTEM CRISIS

The impending financial crisis that Louisiana's public defense system is currently facing was first predicted in 2009. Since that time LPDB has taken several steps attempting to prevent or postpone this crisis.

## CHANGES TO DISTRICT ASSISTANCE FORMULA

- Adopted policies requiring districts to spend down reserve balances to a percentage of annual expenditures.
- Developed District Assistance Fund Adjustment Formula which withheld a portion of state funds from accruing districts, re-allocating those funds to districts facing a shortfall.

## LEGISLATION

- Obtained Legislature approval to increase special court costs from \$35 to \$45, which was expected to increase local revenues (to date, expected revenues have not materialized).

## STRATEGIC MEETINGS TO EDUCATE STAKEHOLDERS AND DISCUSS SOLUTIONS

- Governor's Office, Executive Counsels and Policy Advisors
- Louisiana Supreme Court
- State Senators and Representatives
- Louisiana District Judges Association
- Louisiana District Attorneys Association and Individual District Attorneys
- Louisiana State Bar Association
- New Orleans City Council and Office of the Inspector General

## LITIGATION

- Used testimony during litigation to educate courts and prosecutors

The Louisiana Public Defender Board, its district defenders, and contract programs have been good stewards of public dollars – implementing policies and procedures which have improved supervision, training, standards and guidelines, and client outcomes while aiming to increase revenues and decrease expenditures. LPDB will continue to develop and implement policy initiatives designed to improve the long-term viability of the state's public defense system, including:

- Elimination of the DAF Adjustment Formula to preserve the long-term viability of accruing districts
- Ensuring that local infrastructure support will not be used to supplant state obligations
- Promulgation of Capital Trial Performance Standards
- Working with stakeholders to determine better, more efficient mechanisms for the provision of client representation services

Louisiana's public defense system is at a crossroads, LPDB welcomes feedback and support from its criminal justice, governmental, and legislative partners as well as from community stakeholders. However, going back to the "meet, greet, and plea" systems which has resulted in Louisiana having the distinction as the Prison Capital of the World and also the highest exoneration rate per capita in the United States, is not an option. In order to continue meeting the state's constitutional obligations while providing effective assistance of counsel, LPDB is left with two options:

- Increase revenues to meet caseload demands
- Reduce the number of services provided by public defenders to eliminate deficit spending