



Louisiana Public Defender Board Report of the Interim State Public Defender

To: The Board
Date: November 12, 2014

BUDGET DIVISION

The annual operating budget for our agency was submitted to the State of Louisiana's Office of Planning and Budget on October 15, 2014. The needs-based budget for fiscal year 2016 which begins July 1, 2015 is in the total amount of \$62,165,241. This request, compared to our current budget of \$34,111,854, represents an 82% increase. Included in the request is an increase to the Louisiana Public Defender Fund in the amount of 23 Million (rounded) to the districts and one Million (rounded) to increase the Contract Programs expert witness fees and to fund mitigation specialists and expert witnesses in order to conform to the new Capital Performance Standards. Also requested is an increase to the Indigent Parent Representation Program Fund of approximately four Million. This program has never been properly funded and we hope to employ social workers for parent attorneys statewide.

Since the last Board meeting, we have welcomed Ms. Caressa Hall as our Accountant who began her employment on September 29, 2014. She previously worked as an Accountant at the Office of Finance and Support Services, a unit of the Division of Administration. She will be working under the direction of our Budget Officer, Natasha Carter.

We have recently prepared and submitted the quarterly report of the LaPAS performance indicators for the period of July 1, 2014 through September 30, 2014. The online LaTrac report of our budget was provided to update figures for the current fiscal year which is available to the public on line at www.la.gov.

In addition to the Louisiana Commission on Law Enforcement grant, we received approval from the Joint Legislative Committee on the Budget on October 17, 2014 to add the Casey Family Grant in the amount of \$17,050, which will provide support to parents of children who need legal representation. It will allow the Public Defender Office in the 24th Judicial District to hire one part time Social Worker for 10 weeks and obtain training for their attorneys. The grant period expires December 31, 2014.

Our contract auditor, Corlis Green completed audits of the 16th and 29th Public Defender Offices during the quarter which ended September 30, 2014. She has begun a third audit and will

continue reviewing monthly financial statements reported from the districts as well as working on the financial handbook for the district offices.

CAPITAL DIVISION

At the time of this writing, staff is unable to provide accurate numbers at the trial court level as three of the large offices with large capital numbers have failed to timely and/or completely file their Capital Case Trial Reports. Understanding that these numbers will change, there are 94 of capital cases at the trial court level as of November 6, 2014.

Currently there are four cases on the capital trial waiting list.

CAPOLA Assessment

The second CAPOLA Assessment has been sent to you for your review. The Capital Working Group, chaired by Rebecca Hudsmith, along with members Bob Lancaster, Herb Larson, Tom Lorenzi, and Leo Hamilton will make their recommendation to the Board based on the vote taken November 5, 2014.

At this writing, CAPOLA currently has three cases: State v. Kenneth Willis before Judge O'Callahan in Caddo Parish, State v. Stacey Blount-Juneau and State v. Robert Barthelemy before Judge Beasley in Sabine Parish. There is a fourth case, State v. Tarika Wilson before Judge Dorroh in Caddo Parish. However, she relieved CAPOLA as counsel of record and appointed Elton Richey and Jay Florence in their individual capacities, without CAPOLA support or resources. Mr. Richey subsequently moved to withdraw from both the Willis and Wilson matters. Those motions were granted. Mr. Florence was assigned to all four cases as trial associate counsel.

Staff appointed Mr. Robert Noel to enroll trial lead counsel in Mr. Willis' case and anticipate a contract for legal services with him. He has asked that Mr. Florence stay on that case as trial associate counsel. Staff will request a legal contract for services with Mr. Florence to continue representing Mr. Willis.

As to Ms. Wilson's case, Staff asked Mr. Ross Owen to enroll as trial lead counsel. Mr. Florence has asked to stay on this case. LPDB anticipates contracts for legal services with each attorney. Additionally, LPDB will provide funding for core team members selected by counsel and properly applied for through the Expert Witness Fund on all cases previously handled by CAPOLA.

CAPOLA has taken the position that their reserve fund balance of over \$600,000 is "already earned" and they will not use the funds to defray the cost of representing the capital defendants whom LPDB previously has appointed them to represent. CAPOLA seeks to keep the reserve fund balance comprised solely of state funding and filed *Citizen* litigation seeking additional compensation from July 1, 2014 through the present for representing LPDB clients.

LPDB filed a Petition for Declaratory Judgment, and Injunctive Relief and Petition for Accounting on the state contract, in the Nineteenth Judicial District.

Expert Witness Fund Update

Currently, properly documented and reasoned requests for expert funds which are granted authorize experts to begin their work in January 2015. Based on comments from capital trial lawyers and several judges, the Capital Working Group has made a recommendation that the internal operating procedure regarding administration of the expert witness fund be amended. The amendment would allow core team members, namely mitigation specialists and investigators, begin work immediately to preserve evidence and work with the client during the critical time after arrest. While they may begin work immediately, they will not be paid until the funding is available. This change in the protocol will be presented to the Board for approval.

Currently \$525,526.82 is encumbered; \$62,202.96 has been released and returned to the fund due to staleness; \$152,835.01 is the remaining balance available through June 30, 2015. A properly documented request for approval for an expert witness approved today, has the start date of March, 2015 to begin working.

State Capital Plan

Working with the Louisiana Capital Assistance Project and their new fellow, Sophia Harris, we are reviewing capital charging and indictment trends over the last five years to develop the state capital plan, required by statute. With Ms. Harris' help we are calculating the number of arrests, those that lead to capital indictments, the length of time between arrest and charging, the life of the case at the trial court level and outcomes.

We have updated all of the district capital plans and are beginning to sift through the data to determine how best to cover the location and number of cases in the system.

Weighted Case Load Study

The Capital Division held the first organizational meeting with three district defenders to organize the work plan for the pilot time keeping/case weighting study required by our enabling legislation.

Staff has requested assistance from the American Bar Association and are awaiting their decision. Several Executive Staff members are involved in the study. The participating jurisdictions are Orleans, East Baton Rouge and Natchitoches Parishes. We would like to have one multi-district parish volunteer, however none has come forward. Once the cases are broken down into various classes or types of case, DefenderData time keeping will be used, with events tied to our trial court performance standards. Time will be kept uniformly over a 26 week period. During that time an independent accounting firm will be commissioned to provide data analysis.

The second portion of the study will involve a blue ribbon panel which will select 10 stellar defenders and 10 stellar private criminal lawyers who will decide how much time each task should take for each case type, for lawyers, and at a minimum investigators. That data will be used to determine how much time should be spent on the actual caseload of each office, which in turn will determine the number of staff needed to properly handle the cases in each participating office.

For those Board members interested in the methodology you may access the seminal document at the following link:

http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/lis_sclaid_5c_the_missouri_project_report.pdf.

INFORMATION TECHNOLOGY & MANAGEMENT DIVISION

The ITM Division successfully uploaded the CY14 Annual Report Survey questionnaires to the web for completion by the districts along with detailed instructions. The upload and subsequent download (data collections and compilation) processes were also tested and succeeded. Many districts have already begun filling-out the questionnaire, as recommended by the staff.

Staff completed three notable research projects: the DOC-OJJ representation study which determined that the number of cases PDOs handle in lieu of DOC attorneys is negligible; the FY13 District Defender Salary Range Review; and the SCR99 Desirability, Feasibility and Practicality of Fulltime Offices (versus Contract Offices). The DOC-OJJ study is complete, the Salary Review is complete including the re-analysis using caseload in lieu of populations; the SCR99 analyses are complete, however the final edits to the narrative are still underway.

ITM Division staff produced solvency projections for the year FY16 both with and without bailouts rolling into FY16 from FY15 shortfalls. In collaboration with the Legislative Affairs Director, staff developed, produced, refined and completed analyses and corresponding full-color graphics for all 42 districts' Crossroads Outreach Campaign individual district "one-pagers."

Staff also worked very closely with Legislative Fiscal Office Analyst Zach Rau to produce statistics and graphics to support his article in the Legislature's Fiscal Newsletter "Focus on the Fisc" which was very much supportive of LPDB and corroborates the Crossroads Outreach Campaign inferences and predictions.

Working with the Capital Case Coordinator, the ITM Director took preliminary steps in the case weighting workload study-timesheet project which will entail development of timekeeping compliance among PDO attorneys.

JUVENILE DIVISION

Since September 4, 2014, the Juvenile Division has been active in a variety of arenas. We have set our annual Juvenile Defender Training event for January 27-29 in Baton Rouge at a location To Be Determined. This year we will present a full 3-day track in juvenile delinquency training, and a parallel 2-day track for CINC/TPR. In delinquency, we are planning sessions on Case Management and Organization, Developing a Theory of the Case, Cross-Examination, Probable Cause & Detention Advocacy, Transfer Advocacy, FINS Advocacy, Challenging Confessions, and Sex Cases. For the child welfare attorneys, we will have sessions on Trauma-Informed Practice, Daubert, Childhood Injuries, and Practicing in the Safety-Focused Courtroom. There will be small-group work in some sessions. The Juvenile Division is placing a greater emphasis on in-state trainers, while still achieving a balance with out-of-state perspectives. Four trainers will come from out-of-state and will be joined by multiple trainers from the State of Louisiana. The 2014 session of JDT used seven out-of-state trainers.

Deputy Public Defender-Director of Juvenile Defender Services Richard M. Pittman attended the National Juvenile Defender Center Summit in October and learned the latest developments in the

field of juvenile defense. He also attended the Together We Can Conference and presented on Continuous Quality Improvement for parent attorneys before a group of child welfare stakeholders.

Mr. Pittman has been active in promoting cross-disciplinary training in the child welfare field by being on the Pelican Center Training Committee Workgroup, which has held one meeting since the last Board Meeting. The Pelican Center is emphasizing quality representation as a means to reduce the number of children in foster care.

In addition, Mr. Pittman has been involved in the Children's Justice Act Committee and the CIP Advisory Committee. Those are two organizations of child welfare stakeholders centered around improving outcomes for children in the child welfare system.

Mr. Pittman has been named as co-chair of the Juvenile Committee of the National Association for Public Defense and is on the steering committee for the same organization. He has also attended Human Trafficking training sponsored by the Attorney General's office.

On the day of the Board Meeting, Mr. Pittman is scheduled to present at regional training for juvenile delinquency defenders in Natchitoches. He will present on the Role of Counsel and on significant departures from adult criminal law.

The Juvenile Division has assisted in completing two site visits using the new comprehensive site visit protocol Mr. Pittman and Juvenile Justice Compliance Officer Tiffany Simpson went on two occasions to the 41st district as part of a site visit. Mr. Pittman and Dr. Simpson observed court on October 16, 2014 and Dr. Simpson interviewed staff on October 17, 2014, with the assistance of General Counsel Barbara Baier. Mr. Pittman observed court in Iberia Parish in the 16th district as part of a site visit on October 7, 2014, and accompanied Dr. Simpson and SPD James Dixon for the office visit portion of the site visit on October 13, 2014.

In addition, Mr. Pittman observed CINC court in Alexandria in the 9th district on October 9, 2014.

The Juvenile Division continues to maintain and monitor a list serve for juvenile and parent attorneys to share ideas and request for support. Since September 4, 2014, there have been 59 posts to the list serve.

TRAINING DIVISION

The annual Defender Training Institute was held September 6-11, 2014 in Woodworth, Louisiana with over 30 participants. The curriculum was modified to reflect an emphasis on Louisiana specific practice while teaching the highest national standards. The choice of a new location was a financial savings and contributed to building a sense of community. We look forward to return visits to Woodworth as a more central location to encourage participation from districts across the state. We were fortunate to receive some recognition in an article on the National Association of Public Defenders website lauding the location and our commitment to creating a community of Louisiana public defenders. (For your reference, you may visit it here: <http://publicdefenders.us/?q=node%2F602>).

The annual Capital Defense Training seminar was held October 22-24, 2014 in New Orleans, Louisiana. More than 75 enrolled in the program with several teams bringing an actual case for

brainstorming. Our desire this year was to demonstrate how to translate abstract concepts into actual courtroom presentations for effective capital defense. We emphasized several areas of law and the importance of mitigation. We have many ideas for future capital trainings to make this seminar an even greater direct assistance to practitioners in the field.

STATE PUBLIC DEFENDER

As we continue to address the fiscal crisis facing the public defense system in Louisiana, we have been busy providing information and resources for our District Defenders to help inform the public and stakeholders throughout the state. Three informational meetings were held throughout the state, inviting all District Defenders to attend. Between the meetings in New Orleans, Baton Rouge, and Natchitoches, almost all the districts were represented. Since then, each district has been provided with copies of our booklet, "Criminal Justice at a Crossroads." In it, the general financial outlook is mapped out. Further, a one-page insert was provided to each District Defender providing information for their particular districts.

Staff has made two outreach presentations, recently. The first was to the Rotary Club in Natchitoches, Louisiana. The presentation was coordinated by the District Defender, Brett Brunson. There were a number of prominent community members in attendance, including the mayor. The presentation was well received and met with some surprise. The second outreach presentation was before the New Orleans City Council. District Defender Derwyn Bunton arranged this presentation to be made in conjunction with his budget request to the Council. Again, the presentation was well received and followed by thoughtful and intelligent questioning by members of the Council. Both were opportunities to inform and educate stakeholders whom we do not usually have the chance to address.

Staff has issued notices to fourteen District Defenders informing them of the possibility their districts could be subject to Restriction of Services by the end of fiscal year 2015. We have received responses from all the districts in question and are planning a meetings with all such districts on December 5, 2014 to discuss strategies and solutions to this problem. While it is still our hope these restrictions of service can be avoided, we must prepare for the possibility that they cannot.

There have been recent staff changes. Latrice Clark has resigned from the agency and has been replaced by Rachel Smith. Ms. Smith joined LPDB on November 3, 2014 as the Administrative Assistant in the Purchasing and Procurement Division. She also serves as the Fleet, Property Control, and Travel Manager. Ms. Smith has over 22 years of experience with State Government in administrative support roles having worked with Office of Public Health, Louisiana Workforce Commission, and Office of the Secretary. She is a native of New Orleans and moved to Baton Rouge in 2005 as a result of Hurricane Katrina. Ms. Smith has a compassion for feeding the homeless and helping anyone in need. Our other recent addition is Ms. Caressa Hall who joins LPDB have formerly been with the Division of Administration's Office of Finance Support and Services.