



Louisiana Public Defender Board Report of the State Public Defender

To: The Board
Date: September 7, 2012

BUDGET DIVISION

Fiscal Year 2012

Final FY 2012 CINC disbursements totaling \$27,452 were processed on May 30, 2012.

On June 7, 2012 HB 1059 (Act No. 53) – FY 2012 Supplemental Appropriations was signed by the Governor. Per Act No. 53, LPDB received \$197,000 in supplemental funding to cover FY 2012 expenditures related to the Angola 5 case. Of the \$197,000 received in supplemental funding, a total of \$177,182 has been paid to the Capital Appeals Project (CAP) and Capital Post-Conviction Project of Louisiana (CPCPL).

Act 53 also reduced the LPDB salary budget by \$36,969 per executive order BJ2011-13, Limited Hiring Freeze. Although the salary budget was reduced, staff was still able to submit a request to the Office of Financial Support and Services to transfer \$203,628 from remaining FY12 funds to be disbursed to struggling districts.

Fiscal Year 2013

HB 1 (Act No. 13) – FY 2013 Appropriations was signed by the Governor on June 14, 2012. Per Act No. 13, effective July 1, 2012, LPDB has 16 authorized positions with an operating budget of \$33,318,494, which includes:

- \$31,853,523 for Louisiana Public Defender Fund
- \$400,000 for Angola 5 cases
- \$979,680 for Indigent Parent Representation Program
- \$ 28,500 for DNA Testing Post-Conviction Relief
- \$ 31,791 for LCLE grant activities
- \$ 25,000 in Fees & Self-generated Revenue (to be used only upon collection of fees and/or donations from outside sources)

Districts submitted their final FY 2013 budgets by the June 15, 2012 deadline. An initial DAF disbursement of \$6,790,301 and CINC disbursement of \$481,579 were processed on July 17, 2012.

CAPITAL DIVISION

Juliet Yackel has come on board as the Capital Case Coordinator. She has been working closely with John Holdridge and John Di Giulio to ensure a smooth transition.

The Advisory Committee established to review attorney certification applications has just about completed its review of the initial batch of applications. The Committee has voted on all but a handful of the applicants, and the Committee's recommendations have all been accepted by the State Public Defender. Letters informing applicants of the decisions on their applications are in the process of being sent.

The Capital Division has distributed to the field a capital trial case review form and a capital post-conviction case review form (as required by the Guidelines) in order to gather information about capital cases after their resolution. The Division continues to work on the development of a capital direct-appeal case review form.

The Capital Division continues to ensure that all capital defendants have certified or provisionally certified counsel, and that counsel are assigned as soon as practicable. Recently, the capital programs that we fund reached caseload capacity, and the State Public Defender was required to send a letter to a trial judge informing the court of this fact. In addition, at the end of June, the Trial Level Compliance Officer sent a letter to all district defenders reminding them that capital defendants are entitled to two certified attorneys whenever there remains a possibility that the State will seek a death sentence. The Capital Division has taken additional steps to ensure that every capital defendant in the state is represented by a defense team that includes a qualified mitigation specialist.

Juliet Yackel, John Holdridge and John Di Giulio continue to review expert funding requests, assign counsel to capital cases and oversee capital litigation generally.

The Capital Division is developing a new database case tracking system, which will permit more efficient and effective case tracking and monitoring. Additionally, the Capital Division continues to work on the state capital representation plan and review the district capital representations plans. The Capital Division is also developing attorney compensation rates that seek to ensure greater uniformity in attorney compensation and should improve the quality of representation in some districts.

COMPLIANCE DIVISION

On June 1, 2012, Trial Level Compliance Officer John Di Giulio, along with First Assistant State Public Defender Julie Kilborn, attended a meeting with the judges in District 9 (Rapides Parish) to discuss funding and possible future restriction of services. Similar discussions were had by phone concerning funding crises in Orleans and Calcasieu, as well as follow up meetings in Rapides with Chairman Neuner and the local private bar. He also attended a meeting of the private bar in Calcasieu where District Defender Jay Dixon updated those present on the restriction of services plan and the participation of the private bar.

Mr. Di Giulio attended the Supreme Court Rules Committee meeting in Destin, Florida, on June 7, where discussions concerning mandatory appearances by defendants were on the agenda. He also participated in meetings of the Sentencing Commission on June 14, July 19, and August 16, as well as numerous meetings of various subcommittees of the Commission, including Re-entry, Front End, Drug Court, Release Mechanisms, and others. He also participated in meetings of the Louisiana Interchurch Criminal Justice Commission during the summer.

Mr. Di Giulio made a number of visits to the District 25 Public Defender Office (Plaquemines Parish) to review performance and budget issues there. He interviewed both District Court judges, the District Attorney, and several others, including employees and former employees of the Public Defenders' Office. He accepted, on behalf of LPDB, the resignation of District Defender Peter Barbee in that district and coordinated the interim transition to be headed by Richie Tompson, District Defender of the 24th Judicial District PDO.

Compliance Officer Di Giulio made two visits to St. Bernard Parish to interview District Defender Tom Gernhauer and several others, including Judge Nicosia, as part of the review process of Mr. Gernhauer's request for a salary increase.

Mr. Di Giulio attended numerous meetings involving capital issues, and spent a number of days in Caddo observing a capital trial in which there were allegations of inadequate assistance by the state office. Those allegations were effectively withdrawn. The funding of experts by LPDB, some on an emergency basis, resulted in a life sentence after trial.

Mr. Di Giulio attended two joint meetings of the Louisiana District Judges Association and the Department of Corrections, the last having been conducted at Angola. The issues discussed were closely related to topics being studied by the Sentencing Commission.

Compliance Officer Di Giulio also reviewed and approved funding requests in capital cases and participated in reviewing applications for capital certification, assisting John Holdridge on contract as Acting Capital Case Coordinator.

INFORMATION TECHNOLOGY & MANAGEMENT DIVISION

To assist districts in collecting fees due to their office, the ITM Division revised the generic Court Fee Remission Form to reflect the new \$45 special court costs (\$10 increase in special court costs per Act 366). This form was sent to districts to give to their remitting agencies, such as Traffic, Municipal and District Courts, that currently were not using a form of their own. The ITM Division also created a separate Mayor's Court Fee Remission Form which reflects the \$35 special court costs for Mayor's Courts only. The Mayor's Court form was sent to those districts whose cities qualified for a Mayor's Court.

The ITM Division conducted a successful Continuity of Operations Plan (COOP) email drill in which all LPDB staff, districts, and contract programs confirmed activation of their emergency g-mail accounts. The Division also initiated district/program-level information gathering for district/program-level COOPs. ITM staff worked with affected districts on their COOP in light of the arrival of Hurricane Isaac.

Staff completed analyses of District 34 statistics for the pay increase request taking into consideration salaries at districts of comparable size, (average and standard deviations), and district salaries and caseloads in the GNO area for cost of living analysis, and produced a draft of

a salary increase protocol checklist with pass/fail items and Likert Scale scores to initiate the process for the enhancement of the salary increase process. ITM staff also completed solvency projections for districts accounting for year-end and other FY12 emergency/supplemental disbursements which revised slightly the projection made in late April/early May (before the year-end funds were identified and disbursed).

Technology Management

The ITM Division developed and deployed the District Monthly Financial Report and conducted webinar trainings with representatives of all but two districts, tested programs, and wrote tutorials. Similarly, the Division developed and deployed a District Monthly Compensation Report online to assist the District Defenders in complying with the new contract requirement that they submit monthly reports to LPDB on all salaries, wages, professional service contract amounts or other earnings. These monthly reports look nearly identical to the Annual Personnel Expenditure Reports, and as such, are automatically compiled into an Annual Personnel Expenditure Report so that at year's end (CY13), the report will be automatically produced, relieving district personnel of a major report over the holidays. This report will also track whether an attorney is on a 1099 or W-2 tax form. Staff expects the technical glitches to be eliminated by the end of October when the September reports are due.

With the assistance of the Juvenile Defender Advisory Council (JDAC), staff initiated a major review and revision of the Juvenile tabs on the database and has begun the creation of a Motions Bank for Juvenile Defenders statewide. The ITM Division also developed a comprehensive, mutually-exclusive set of all potential outcomes for S.O.A.P. cases which were approved at the September District Defender Advisory Committee meeting and will be added to the database later this month.

Staff in the ITM Office generated numerous ad hoc reports on such topics as capital cases, CY 2009 - YTD new & pending cases: attorneys' caseloads & workload comparison, active S.O.A.P. cases, juvenile delinquency only caseloads & workloads for current and previous years, CY11 & CY10 aggregate personnel expenditures, cost projections for PDOs to handle SOAP hearings, personnel increase & decrease counts by district for CY10, CY11, and demographics of indigent incarceration CY11-YTD.

Staff also implemented the LPDB server upgrade from Windows Small Business Server 2003 to Windows Server 2008 and re-configured all workstations and laptops to interface with the new server.

Lastly, Chase May has been re-hired as the IT Tech Support Analyst I/Network Administrator for the agency.

JUVENILE DIVISION

Staff attended the Juvenile Justice Implementation Commission (JJIC) meeting on August 7, 2012. The focus of the meeting was the Report to the Legislature covering the last five years (2006-2011) of juvenile justice reform in Louisiana.

There are three Juvenile Justice Consensus Meetings scheduled around the state, in Ruston on September 18th, Lafayette on September 20th, and Baton Rouge on September 25th. The Consensus Meetings will bring together judges, prosecutors and juvenile defenders to discuss

juvenile justice system reforms. LPDB was asked to provide the names of juvenile defenders in each of the locations. LSUHSC has offered a small contract in the amount of \$2500 to cover staff travel and attendance at the meetings.

The 32nd Annual Governor's Conference on Juvenile Justice was held August 15-17, 2012, in Baton Rouge. For the first time, juvenile defenders presented at the event. JIDAN team members Joshua Perry from Juvenile Regional Services (JRS) and Hector Linares of the Louisiana State University Law Center Juvenile Defense Clinic presented on the role of the juvenile public defender. The session was well attended and the presentation was well received, with lively audience participation.

On August 24, 2012, the Juvenile Defender Advisory Council (JDAC) met. The meeting was well attended with several in depth conversations about local jurisdiction practices and problems. Dr. Stilling and Cristine Roussel led a discussion on continued improvements to the juvenile defender portion of the data base/case management system. JDAC's next meeting is scheduled for November 30, 2012.

With the help of Hector Linares, we are now ready to upload 28 motions to create the juvenile motion bank in the data base/case management system.

The last LPDB/JIDAN training is scheduled for September 27-29, 2012 in Monroe, Louisiana. The foci of this training are brainstorming the theory of the defense, evidence and evidentiary hearings.

The Board's Juvenile Justice Working Group, formed during the last Board meeting on May 29, 2012 and comprised of Reverend Dan Krutz, Tom Lorenzi, Jacqueline Nash, and Gina Womack, will be meeting this month to assist staff in prioritizing the goals and objectives of the Board's strategic plan.

SPECIAL PROJECTS

Since the last meeting of the LPDB, the Special Projects Advisor has continued to work on the following projects: writing, editing and facilitating the dissemination of the LPDB e-newsletter to 900+ subscribers; updating the website with relevant announcements, employment opportunities, events and information; drafting and disseminating press statements as appropriate (four statements released since the last Board meeting); managing the media archive and social media outlets (FaceBook and Twitter); and, participating in staff meetings and other discussions/projects as a member of the executive team.

In addition, since the last meeting, the Special Projects Advisor has developed an anti-discrimination statement for the agency; been closely involved in the review of districts projected for service restriction; assisted the Calcasieu Public Defenders' Office (completed) and 37th Judicial District Public Defenders' Office (in progress) in the development of service restriction plans; supported the media efforts of the districts upon request; contributed to the LSBA Article on the Funding Defense crisis and other materials related to raising awareness of Louisiana's public defense crisis; worked to appropriately dedicate the 50 hours of technical assistance from Spitfire Strategies (media training at the Defender Leadership Training); submitted a \$103,573 grant application to LCLE for increased auditor capacity (LCLE vote for approval in September); successfully completed all grant reporting on our current LCLE grant; supported juvenile projects by ensuring the maintenance of the Juvenile Defender Advisory

Council, by participating as a member of the Southern Juvenile Defender Advisory Group, developing improvements for the case management system relating to delinquency data collection, and pursuing grant opportunities/relationships; attended the Community-Oriented Defender Network conference in Washington, DC and conducted follow-up outreach for Veteran's advocacy; and, supported the drafting and completion of agency protocols related to third-party notice, media management, file retention, and agency timekeeping.

TRAINING DIVISION

The Training Division held the annual 3-day workshop for Louisiana investigators from July 16-18, 2012 in Baton Rouge. This training focused on investigating sensitive issues in sex offense cases. The participants found the training to be "really effective" and expressed a strong interest in attending future trainings that would help them cement the skills they obtained at this Investigator Workshop.

The Training Division also held a forensics training titled "Debunking the Myth: Effective Criminal Defense in the Forensics Age" in collaboration with the Louisiana Association of Criminal Defense Lawyers on August 10, 2012 in Shreveport. At the training, participants were provided with cutting edge information on crime scene reconstruction, DNA testing, firearms and ballistics, video surveillance reconstruction, forensic testing of mental health and intellectual disability and forensic toxicology from national experts. Participants indicated that it was an "excellent" training that was both "interesting and informative" and one of the more "outstanding" training seminars they had ever attended.

Assistant Training Director Irene Joe participated as a trainer in at the National Defender Training Project in Dayton, Ohio from May 30 – June 6 and the Southern Public Defender Training Center in Birmingham, Alabama from August 1 - August 4.

Ms. Joe continues to work with Heather Hall, Special Projects Advisor, to reevaluate and implement the juvenile strategic plan set forth by the Board in 2010.

Additional trainings for 2012 include: the Defender Training Institute (September 9 – 14, 2012); the DTI Annual Conference (September 13 – 14, 2012); and the Capital Defender Training (October 24 – 26, 2012).

FIRST ASSISTANT STATE PUBLIC DEFENDER

Since the last Board meeting, First Assistant State Public Defender Julie Kilborn has managed district service restriction projections, correspondence, budget review and related activities. For the Orleans Public Defenders and the Calcasieu Public Defenders' Office, she has collaborated to develop approved Service Restriction Plans and overseen compliance with the Contract Addendum for Services, which requires additional staffing, caseload and financial information. With General Counsel, there has been a concerted effort to garner support from the Louisiana Legislative Auditor in its review of the districts and to achieve compliance with the itemized reporting requirement so that districts can verify that they are receiving all dedicated revenue, as required by law.

With the Training Division, she continues to perform as Extern Supervisor for Fall 2012 Extern Savannah Steele, who started work mid-August and is involved with a number of key projects. Ms. Kilborn is also working with the LSBA, as a member of the Board of Governors as well as

with the Leadership Class, to develop projects that would be of mutual benefit to LSBA members and LPDB.

Working with other staff, a number of important policies/procedures, including Notice to Third Parties and Media & Communications have been finalized. The File Retention Policy is still under development. Additionally, First Assistant State Public Defender Kilborn continues to conduct weekly Staff Meetings and integrate weekly work plans from all staff.

Ms. Kilborn is preparing for a staff strategic planning session on October 9, 2012; has developed and coordinated a comprehensive orientation for the Capital Case Coordinator; co-facilitated the District Defender Advisory Council meeting on September 6, 2012 with agenda input from the members; and, communicated with the Board and its Committees. Staff members are now all keeping detailed timesheets, pursuant to the Board's directives. As part of the organizational changes in the agency, including new staff, many staff changed offices during the month of July to more efficiently communicate with colleagues and share support personnel.

LPDB is currently advertising/interviewing for four positions. Two qualifying applications for the Director of Juvenile Defender Services position and two for the Juvenile Justice Compliance Officer (one duplicated applicant) have been received. Interviews for the two open paralegal positions are underway. The State Public Defender and First Assistant State Public Defender prepared materials and attended the LSBA Minority Student Job Fair held at LSU on August 18th.

LPDB has developed draft appellate standards, with assistance from consultant Phyllis Subin. Those are currently under staff review and revision and will be circulated to the field for feedback soon.

With the Division of Administration and the Department of Corrections, and support from all Executive Staff, Ms. Kilborn continues to work to develop an appropriate structure and budget to manage S.O.A.P. appointments in Louisiana. Additionally, Ms. Kilborn continues to work with the Pelican State Center for Children and Families to improve the juvenile justice system in connection with Child in Need of Care proceedings.

LPDB expects to be approved for a \$103,573 grant from LCLE on September 12, 2012. This will enhance our financial review capacity in-house and make more support available to the field. LPDB will receive notice of approval or denial on the \$350,000 BJA grant to fund a case weighting analysis (over 24 months) by September 30, 2012. With the Training Division and the Special Projects Advisor, work continues with Spitfire Strategies to develop appropriate media training to be provided at the 2013 Defender Leadership Training. Finally, Ms. Kilborn continues to communicate with Wellspring Foundation about their juvenile justice investments in Louisiana and potential funding for LPDB in the future.

The First Assistant State Public Defender has represented LPDB at meetings of the Sentencing Commission, Criminal Attorney Accountability Working Group (with a training scheduled for October 12 – 13, 2012), the LSBA Annual Meeting and meetings of the LSBA Board of Governors. In July, she attended (with the ITM Officer, Budget Officer, and Assistant Training Director) the annual Community Oriented Defender Network Conference at the Brennan Center for Justice at New York University Law School. She has worked with other divisions to approve press statements, newsletter releases, responses to litigation (*Stanley v. Casanave*), site

evaluations in district offices (OPD and the 22nd Judicial District Public Defenders' Office) and the pending litigation against New Orleans Traffic Court.

STATE PUBLIC DEFENDER

We welcome Juliet Yackel, our new Capital Case Coordinator. She arrived from Illinois in time for our first (and hopefully last) hurricane of the season. She and John Holdridge are working together to make the transition seamless.

We welcome back Chase May, who returns to his former position of IT Analyst Support Tech. We are very pleased to have both Juliet and Chase on staff.

Last year when the Board approved its strategic plan, it approved the creation of the position First Assistant State Public Defender. The First Assistant State Public Defender position handles a wide array of issues: working with the media; facilitating meetings with legislators; reaching out to criminal justice partners; running the internship/externship program; overseeing the budget process; and, handling personnel to name a few areas of concentration. I am extremely pleased to report that Julie Kilborn has accepted the position and has been functioning in that capacity since the beginning of July. She continues her oversight and direction of the Training Division as it remains one of the highly successful services LPDB provides to the field.

In addition to the work I have been doing in the Juvenile Division I participated in Juliet's Orientation; interviewed paralegals for the capital and juvenile divisions; met with Sam Dalton, John Lindner, Katie Widhalm, and Necole Williams after their "cover shoot" for the LSBA Journal; and, moved offices, like many members of our staff. Along with other staff I have also been working on the file retention policy, appellate standards, monitoring capital caseloads and those districts in restriction of services or about to be.

LPDB staff met at Juvenile Regional Services (JRS) with staff members of the Open Society Institute on August 3, 2012 to discuss OSI's funding in the adult and juvenile criminal justice systems. OSI was very interested in the notion of what funding the next level of supporting reform would look like.

I have reached out to Wellspring regarding juvenile defender leadership training to discuss funding opportunities and am looking at other funding options for such training.