

**Testimony of Paul B. DeWolfe, Public Defender**

**For the Office of the Public Defender**

**Budget C80B00**

February 25, 2015

1:00 p.m.

Good afternoon, Mr. Chairman and members of the subcommittee. I am Paul DeWolfe, Public Defender for the State of Maryland. And this is Kathy Mattis, our Chief Fiscal Officer.

Let me begin by thanking our budget analyst from the Department of Legislative Services, Ben Wilhelm, for his thorough and thoughtful analysis. His understanding of the issues confronting the Office of the Public Defender, most importantly, excessive caseloads and the adverse impact of underfunding and understaffing, is apparent.

As Ben's analysis accurately describes, OPD has been significantly underfunded and under resourced over the past six years. These conditions have created an overwhelming strain on the Agency from excessive attorney caseloads, denial of administrative support that further expands attorney workloads and compromises in case-related expenses at a time of increasing

complexity in evidence analysis and technology. These conditions are unsustainable long term and do not ensure quality client representation.

Since 2010, OPD cases have increased approximately 13% through calendar year 2014, while the number of attorneys assigned to casework has dropped by 1%, resulting in an increase of more than 15% in caseloads for the same time period. Also, during this period, the Judiciary added nine new judges and eight new specialty problem-solving courts without the addition of public defenders. For fiscal year 2017, the Judiciary is requesting an additional 12 new judgeships. OPD's goal is to have 50% and 40% of the districts in line with standard for circuit and district cases, respectively. But in 2014, only 25% of the districts were in line with standard for circuit cases and only 8% for district cases. We have a long way to go.

While workloads increase, staffing and funding do not. Historically, with appropriations that include double-digit turnover, OPD has been further forced to freeze hiring and carry over expenses to the following year. Excessive vacancies and the elimination of positions further exacerbate extreme caseloads and reduce the Agency's ability to respond to budget crises by shrinking the base of non-mandated funds available.

Exhibit 8 on page 17 of the analysis provides a graphic illustration of the effect on the Agency of caseload increases coupled with staffing

reductions. OPD has lost 15.2% of its staff from its peak in 2007. OPD has not had fewer staff than it does now since 2003 when it had 20.3% fewer cases. For OPD, since the Agency budget is over 80% personnel costs, budget cuts necessarily mean cuts in staffing. This has been accomplished primarily by reducing non-attorney staff. As a result, attorney workloads have increased to include tasks which were previously handled by others, in addition to their increased caseloads.

To put a human face on the problem of excessive attorney caseloads, consider the case of one attorney in Prince George's County District Court. With an average caseload of 1,228 cases per year, she typically handles 30 to 45 cases per day. In real terms, she is responsible for preparing to represent 30 individuals in the morning docket and return in the afternoon to handle another 15. Some are in jail, some are on the street. To meet and prepare to represent this many people in one day requires her to work nights and weekends just to keep up with the jail visits and the office appointments. This crushing caseload is repeated two, three or four days per week. I recently spoke with a District Court Judge who told me, "You have great lawyers" but they are being rendered ineffective by volume". The burnout felt by these lawyers is real and it is tragic.

We have been asked to comment on the established caseload standards and whether they should be updated. The Maryland OPD Attorney and Staff Workload Assessment was a grant-funded study by the National Center for State Courts. OPD has been publishing its actual caseloads measured against the Maryland specific standards since 2006. It is true that OPD has not been able to meet its caseload MFR goals, however we believe the reasons can be found in today's budgetary analysis provided by Mr. Wilhelm. Since cases have increased by 21,000+ cases since 2007 and staffing has decreased by 15% during that same period, the reason the Agency is unable to meet caseload standards is obvious. In our judgement, there is nothing wrong with the published standards. They accurately reflect the number of cases an attorney should be assigned to maintain effectiveness of counsel. Budget cuts and staffing reductions have prevented the Agency from deploying resources to make significant progress in workload reduction. OPD does not object to conducting another study to update the 2006 workload assessment. However, such a study is more likely to recommend attorneys handle **fewer** cases than the current standards. (See The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards, 2014, A National Blueprint for Future

Workload Studies). OPD has not been able to receive funding to meet the 2006 workload study recommendations despite year-after-year efforts.

OPD has provided two alternative potential solutions. The first of these would require OPD management to send (panel) excess cases to the list of private attorneys who are qualified and willing to accept panel cases from OPD. Indeed OPD's enabling statute CP Section 16-208 (b) (2) says "Panel attorneys shall be used as much as practicable". Despite this authoritative language, budget constraints have prevented OPD from using panel attorneys except when ethically required to refer cases due to conflict-of-interest considerations. While this is an expensive solution, it would be the most efficient and reliable method of assuring caseload control. OPD has proposed legislation to implement this solution (SB 1071 and HB 1582). The second solution would be to encourage the legislature in the spirit of "Justice Reinvestment" to decriminalize and remove jail sentences from a list of minor offenses (HB 1312). This can be done without affecting public safety. OPD has been working with various legislators to expand the list of offenses which can be charged by way of a civil citation. Additionally, by removing the potentiality of incarceration for low level traffic offenses, the legislature can realize significant savings across the criminal justice system, not just with OPD.

Besides continued efforts to access additional staffing and funding, primarily for attorneys, case-related expenses and new technology, several additional initiatives that would positively affect caseloads are under discussion and gaining support, in some cases.

OPD strongly supports the right to counsel. The Agency's position has been consistent. In order to provide effective assistance of counsel, OPD must have adequate funding and staffing.