



DIVISION OF PUBLIC DEFENDER SERVICES

State of Connecticut

OFFICE OF CHIEF PUBLIC DEFENDER
55 FARMINGTON AVENUE, 8TH FLOOR
HARTFORD, CT 06105

ATTORNEY TASHUN BOWDEN-LEWIS
CHIEF PUBLIC DEFENDER
TEL: (860) 509-6429
FAX: (860) 509-6499

Testimony of TaShun Bowden-Lewis, Chief Public Defender

Hearing on Governor's Proposed FY 24-25 Budget

Appropriations Committee

February 24, 2023

The Public Defender Services Division is responsible for:

- Defense of indigent accused children and adults in criminal cases,
- 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.

In September of 2022, the Division made a very critical and significant budget request to the Office of Policy and Management. The Division requested an increase of \$23,527,153 to the Assigned Counsel account, which equates to an 80% rate increase for all assigned counsel case types. This request was made in order to address the low rates we are currently paying our assigned counsel; however, this was not recommended in the Governor's budget. Although this is a significant increase, it is necessary to bring the rates up to a comparable level with the rates being paid federally and in other surrounding states. If funding for a rate increase is not provided, the Division will continue to lose its ability to contract with attorneys to provide quality representation to the indigent population. We are respectfully asking the Appropriations Committee to provide funding to the assigned counsel for this rate increase in order to fairly compensate assigned counsel,

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.

who are crucial to the provision of constitutionally mandated representation of indigent adults and children.

- Unlike some other state agencies, **the assigned counsel unit at the Division cannot continue to function and assign cases without a budget increase.** The cases are assigned to independently contracting private attorneys, not state employee attorneys. As such, these attorneys can leave and are leaving their contracts due to the inexcusably low pay.
- Since FY 20, the Division has lost 30% of our assigned counsel attorneys due to low rates. We are losing our independent contractor attorneys and with them, the ability to provide constitutionally mandated court-appointed representation for our clients. In addition, many of our current assigned counsel are threatening to withdraw from current cases and boycott taking any additional cases due to the low rates. **Without a significant budget increase now, we will continue to lose attorneys for the next two years and beyond.**
- Current rates in CT are woefully inadequate compared to the Federal level and to surrounding states. **Please see chart on page 5 of this handout.** Please note the current CT rates and proposed rates. **We are already operating at 2007 rates. The proposed rate increase would bring CT back to comparable levels with the Federal government and surrounding states.**
- **There is a real threat of a lawsuit to the state if these rates are not increased.** The class action lawsuit against then Governor Rowland and the Division of Public Defender Services Commission, Rivera v. Rowland, highlighted the lack of sufficient resources for indigent defendants in criminal cases. We are tracking towards a similar lawsuit if these low rates are not addressed. Some examples: 1. A **2022 injunction ordered in New York increased assigned counsel rates there from \$90/hour to \$125/hour minimum.** 2. **In Maine**, following a lawsuit filed by the ACLU in 2022, after the Maine legislature refused an increase for assigned counsel, **this year Maine's Governor's biennial budget contains a \$17 million increase to bump the \$80/hour rate (already higher than CT's) to \$150/hour. This measure has significant bi-partisan and judicial support in Maine as an emergency measure.**
<https://www.wmtw.com/article/maine-legislators-propose-emergency-funding-to-boost-pay-for-attorneys-doing-public-defense-work/42477849#>

Maine has 1/3 of CT's population and lower costs of living. Please see the chart on page 5.

- The Division has lost over 123 active attorneys for assigned counsel contracts during the past four fiscal years, with more now refusing cases since the Governor's budget came out. Each of those attorneys carried a caseload that had to be redistributed among the rest of the assigned counsel, which results in delays for clients and more expenses for representation.

- Our clients are abused and neglected children, children facing detention and placement, indigent adults facing a loss of liberty, innocent adults wrongly convicted, and indigent parents at risk of losing their children, to name a few. Our clients are the most vulnerable citizens of this state, facing the direst legal consequences. To continue to pay their attorneys 2007 wages will only decrease the quality of representation.
- Our clients must be indigent to receive representation. Judges across the state every day, all day, appoint assigned counsel to cases and expect the Division to provide competent attorneys willing to accept assignments. This dynamic is more at risk than it has ever been, with attorneys turning to private and state agency practices in order to support themselves and not accepting assignments or continuing to contract with us. The Governor's recent decision to appropriate 0 in his budget for assigned counsel pay has exacerbated this problem.
- Assigned counsel, through their work, hold the police and state accountable to their own standards and are necessary for our justice system to continue to function.

In addition to the rate increase request, the Division requested \$60,000 in the Training account to provide funding for a PDS Trial Skills Training Program. This would be a week-long residential version of our trial skills training program. The Division would like to focus more resources on providing foundational trial skills training for our new attorneys, who comprise about 1/3 of the Division's attorneys. We currently run a week-long trial skills training once a year that we offer to 25-30 public defenders and assigned counsel. We use 10 faculty members who set aside a full week from their busy schedules to train the attendees. The request is to be able to house the attendees close by the training site, which would enable significant additional time to be spent on training every day, in particular by facilitating the assignment of homework in the evenings, where the attorneys draft trial materials, such as witness examination outlines and closing arguments, which they then practice using the following day. The residential program would also result in a significant morale boost. The attorneys will see that by our Division's mirroring the best practices for trial skills trainings utilized nation-wide, we are committed to investing in them and supporting their practice.

The Governor's proposal for FY 24 and FY 25 does do the following to the Division's budget:

- Provides \$5,115,474 in FY 24 and \$5,788,976 in FY 25 to annualize the cost of existing wage agreements;
- Reduces \$1,661,431 in each of FY 24 and FY 25 to remove funding for the 27th payroll;
- Recommends a \$5 million Unallocated Lapse to the Judicial Branch in the back of the budget that will result in an estimated reduction of \$577,206 to the Division.

The Division is appreciative that the Governor's proposal provides sufficient funding to maintain current services, in addition to providing adequate funding for the collectively bargained salary increases for employees going forward.

The Division of Public Defender Services is respectfully requesting the Appropriations Committee to provide sufficient funding to implement the assigned counsel rate increase and the trial skills training program. As noted above, it is pivotal in order to provide competent and effective constitutionally mandated legal representation to the indigent population of CT. One of the pillars of the Governor's budget is to provide assistance to the most vulnerable populations in the state. Investing in public defense and providing a fair and appropriate compensation rate for the state's public defender assigned counsel only furthers and solidifies that pillar. The Division looks forward to working with this Committee, the Office of Fiscal Analysis, and the Office of Policy and Management during this budget process.

- ***PLEASE SEE CHART ON NEXT PAGE*** -

FROM: OFFICE OF CHIEF PUBLIC DEFENDER

CHART SHOWING HOURLY RATES OF PAY FOR ASSIGNED COUNSEL, FOR CT AND OTHER STATES:

CATEGORY	CT CURRENT RATES	CT PROPOSED RATES	CT FEDERAL RATES	CT OTHER AGENCY RATES	N.Y.	N.H.	WASH D.C.	ME	MI	ID	MA	RI	MD	CT PRIVATE AVERAGE 2021
CRIMINAL (higher hourly rates for more complicated matters)	\$75 \$65	\$120 \$135	\$158 \$202	N/A See below	\$158 Ordered by the NY Supreme Court, July, 2022 as an injunction, retroactively.	\$90 \$100 \$125	\$90 (seeking \$158)	\$80 - \$150 Jan 2023 Gov and Legislature propose 17 mill increase to raise rates to \$150	\$100 \$120	\$150	\$65 \$85 \$120	\$100 \$90 \$85 \$60 \$50	\$75 \$60	\$303
CHILD PROTECTION AND GAL (higher hourly rates for more complicated matters in CT)	\$75 \$65	\$120 \$135	N/A*	N/A See below	\$75 (was not in lawsuit)	\$90	\$90 (seeking \$158)	\$80 - \$150 Jan 2023 Gov and Legislature propose 17 mill increase to raise rates to \$150	N/A	N/A	\$85	\$85 \$60 \$50	\$75 \$60	\$341
OTHER		Governor's proposed Increase in Connecticut= 0		Judicial: \$200 AG: \$270- 330 \$210- 360 AG federal issue: \$550										

*N/A means not applicable and/or not available. Note: Vermont is excluded because they pay according to a salary scheme, but they have increased salaries from baseline \$115,000 to \$150,000.