

Testimony of Paul B. DeWolfe, Public Defender

For the Office of the Public Defender

Budget C80B00

February 15, 2017

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.

I want to thank Ben for his thorough and thoughtful analysis. He clearly understands the legal and operational issues confronting the Office of the Public Defender; most importantly, excessive caseloads and understaffing.

As Ben's analysis accurately describes, historically, OPD has been underfunded and under resourced, compounded by a significant loss of support staff positions in recent years. These adverse conditions are the direct cause of excessive attorney caseloads and expanded attorney administrative casework that impair our ability to ensure quality client representation. Since its peak staffing in 2007, OPD has lost 15.2% of its

staff. OPD has not had fewer staff than it does now, since 2003 when it had significantly fewer cases. The resulting excessive caseload issues have been well-discussed in our prior hearings and documented in MFR and OLA audit reports.

There is potential for progress however. Changes in legislation have decriminalized certain offenses and removed potential jail sentences, contributing to reductions in caseloads for certain areas of law. Proposed legislation for the removal of jail sentences for additional minor offenses such as trespass and theft under \$100 is currently under consideration. This measure is in the spirit of “Justice Reinvestment” to decriminalize and remove jail sentences from a list of minor offenses. We believe this can be done without affecting public safety. *See* HB 927.

Another measure proposed by OPD would clarify OPD management’s authority to send excess cases to 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, OPD does not have the funding to use panel attorneys except when ethically required to where there are conflict-of-interest considerations. This newly clarified authority, with sufficient funding, would be the most efficient and reliable method of

assuring caseload control from year to year, while helping send panel work to the private sector. *See* HB 1231.

While these measures aid in the effort to reduce attorney caseloads, additional resources are still needed for administrative and case-related staff support. Funding for contractual support staff in FY2018 will aid in our recovery from the loss of twenty five administrative positions last year and lower personnel turnover rates in the FY2018 budget will reduce support staff vacancies and our heavy reliance on temporary personnel. While a further reduction in the turnover rate would provide some funding, it may not result in more staffing due to the process for filling vacancies. Also, the addition of contractual positions affords OPD the most flexibility to hire and deploy support staff by function, position, jurisdiction and area of law in the most efficient and timely manner for FY2018.

And finally, OPD requires investment in technology. After years of virtually zero funding, two initiatives are currently underway:

- The development of the functional requirements (RFP) for a Case/Matter Management System that will be used by both the Office of the Attorney General (OAG) and the Office of the Public Defender (OPD) to track and manage both litigation and non-litigation matters. The System will be customized for each agency to replace several older docket systems,

programs and tools currently in use within these agencies. The RFP will be used to solicit proposals from vendors and evaluate next steps.

- OPD's IT group is consolidating network operations and relocating to a new facility in Linthicum. This facility will house the agency's network in a secure and safe environment to ensure reliability and stability for our network.

These initiatives will improve OPD systems and IT functionality but fall short of the technology required to keep pace with the increasing complexities of evidence collection, timely access to specialized media and advanced technology, and analysis. Additional funding will be required to ensure that OPD is strategically positioned to become and remain current.

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.