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**Maryland Office of the Public Defender
Fiscal Year 2023 Operating Budget
Response to Department of Legislative Services Budget Analysis**

**Budget & Taxation Committee
Public Safety, Transportation, and Environment Subcommittee
Senator Cory V. McCray, Chair
February 18, 2022**

**Appropriations Committee
Public Safety and Administration Subcommittee
Delegate D. Antonio Bridges, Chair
February 23, 2022**

Good morning, Mr. Chairman and members of the subcommittee. I am Keith Lotridge, Deputy Public Defender for the State of Maryland.

I want to thank Caleb for his detailed analysis of the OPD budget. We appreciate his ongoing support and guidance as we navigate the fiscal challenges of serving our clients, particularly during COVID.

I will give a brief overview of our current situation, our ongoing efforts, and our needs moving forward.

As you are aware, our agency has always been challenged with an exceptionally high volume of cases, which has resulted in attorneys consistently maintaining a workload beyond what is reasonable or appropriate. The backlog of cases, as a result of court closures during COVID, exacerbates this issue, possibly

to unsustainable levels. Our Core Staff and attorneys must still constantly monitor the backlogged cases to ensure that our clients are regularly informed about the status of their case and to help them with the consequences and uncertainty stemming from long delays and detention. While court closures and delays significantly curtailed the number of matters that could be resolved, the inflow of new cases and matters has not stopped. Consequently, caseloads grow daily in our office and the Courts.

Even with the delays, we have to work on behalf of our clients in all aspects of their cases, at all times. This goes beyond just being present for a trial or hearing dates. For example, it means we have a duty to contest and address the consequences of pre-trial delay. The court closures resulted in many of our clients remaining incarcerated for longer and longer periods of time waiting for their trial dates. For some misdemeanor cases, the delay is as long as the maximum sentence available. The delay in trial dates has also delayed the availability of treatment and services, and increased the instability of our clients' families. In response, we are constantly working to obtain release for clients, and continuing to advocate for improved conditions and safety measures. These efforts may not resolve cases, but they are a critical part of our professional obligation to mitigate some of the ongoing consequences of the delays and ensure our clients' wellbeing.

To complicate matters, many defendants, especially those who are not incarcerated, wait to secure legal representation until they have a court date. This means there is a much larger pool of potential clients in the Judiciary's backlog than we are able to track. We will not know how many additional cases there are, by location or area of law, until they are set for trial and/or hearings and the individual qualifies for our representation.

The Courts are scheduled to end Phase III of their COVID plan on March 7th and increase the number of criminal matters scheduled, including the resumption of jury trials. If the Courts increase the number of cases heard per day to address the backlog and current cases, as expected, OPD will be representing more clients in court on a daily basis than we did pre-COVID with no increase in resources. In addition, OPD is not immune to the turnover of personnel as a result of COVID and the "Great Resignation." Our turnover during COVID exceeded 14% in 2021 and is on track to be nearly 16% in 2022, and we currently have sixty-five (65) attorney positions open.

Beyond the challenges created by COVID, caseloads for OPD attorneys have exceeded standard caseloads for years, as measured by standards derived in a work study from 2005 that are absurdly out of date. For example, in the 2005 work study, a simple DUI case would likely have required the review of ten (10) pages of written discovery, a meeting with the client and a second review of the

discovery with the client, an attempt to speak to the charging officer, and potentially negotiating with the State Attorney. In 2022, for that same simple DUI, there would be additional activities required to collect and review cruiser cam, body worn camera footage from every officer present and any other digital source of information. The preparation for that one traffic case, which would have been roughly two (2) hours in 2005, is six (6) or more hours in 2022, a three-fold increase in time required by one of our attorneys just to prepare a misdemeanor traffic case.

This summer, the American Bar Association (ABA), the National Center for State Courts, the Rand Corporation, and other leading entities that conduct public defender workload assessments are establishing national caseload standards for Public Defenders. We anticipate that these revised standards will show that OPD attorney caseloads are shockingly higher than indicated against the 2005 standard, even under pre-COVID circumstances, are unsustainable, and create a significant risk of ineffective assistance of counsel in cases across the State. We struggle to address these issues with current funding, but we need more attorneys to impact excessive caseloads.

In addition to our backlog and workload issues, OPD's salary structure is not competitive to recruit and retain the staff necessary to provide quality representation to our clients. The trial experience our attorneys acquire during

their time at OPD makes them highly desirable to other public and private legal firms where they can earn more money and maintain a smaller workload. OPD is unable to offer competitive salaries or a career path that attracts, retains and incentivizes our attorneys, especially those handling the most complex cases, and especially as caseloads and vacancies rise post-COVID.

We have advocated for OPD salary increases for all of our staff for years. OPD attorney salaries had not been adjusted since 2004. While OPD was able to get approval for salary increases for certain attorneys in FY2022, these increases were only for attorneys, not Core Staff, and only for those with the greatest pay disparities.

Our attorneys do not work in a vacuum, but rely on the professionalism and expertise of our Core Staff and social workers. When staffing cuts are mandated, as they have been several times over the past fifteen years, OPD has had to sacrifice Core Staff positions. As a result, attorneys are required to perform administrative tasks that are more effectively and efficiently performed by Core Staff and that further adversely affect their ability to support their caseloads. OPD has requested approval of a new position and salary structure for OPD Core Staff that more accurately reflects the critical experience and impact of these positions in the Agency and supports quality recruitment and retention of these positions.

To address more opportunity for attorney advancement, OPD has requested approval for a new position and salary structure to recruit, promote and retain our attorneys, especially those handling the most complicated of cases.

In short, OPD needs human resources to ensure that it can meet its constitutional obligations to its clients and overcome the challenges that have been exacerbated by COVID. We need more staff and attorneys, and we need higher salaries and improved advancement opportunities to recruit and retain them.

The people who work at OPD are dedicated to our mission and our clients in all conditions. We ask for additional resources and funding to ensure that we meet our obligations to support them.

Thank you.