



Law Office of the
COOK COUNTY PUBLIC DEFENDER

69 W. WASHINGTON • 16TH FLOOR • CHICAGO, IL 60602 • (312) 603-0600 (312) 603-9860 (fax)

Amy P. Campanelli • Public Defender

October 20, 2017

John Daley
Chairman, Finance committee
118 North Clark Street
Room 567
Chicago, IL 60602

Re: FY2018 Budget for the Public Defender

Dear Chairman Daley:

We received your letter asking for “a plan for budget reductions totaling 10% of the President’s FY18 Executive Budget Recommendation for your office.” As you are no doubt aware, the President’s recommendation for the Law Office of the Cook County Public Defender (“Office” or “Public Defender”) for FY18 was \$76,069,750. A 10% reduction would result in a cut of \$7.6 million, or a final budget of \$68,462,775.

We informed Cook County Board President Toni Preckwinkle (“President”) in August 2017, when she asked if we could absorb a 10% cut in anticipation of the repeal of the sweetened beverage tax, that we cannot suffer a reduction of this magnitude and maintain our current operations. We would not be able to fulfill our statutory and constitutional obligations to give effective assistance of counsel. We would not be able to provide legal representation for the all the poor people in Cook County who are facing criminal prosecution or the prospect of losing custody of their children to the State.

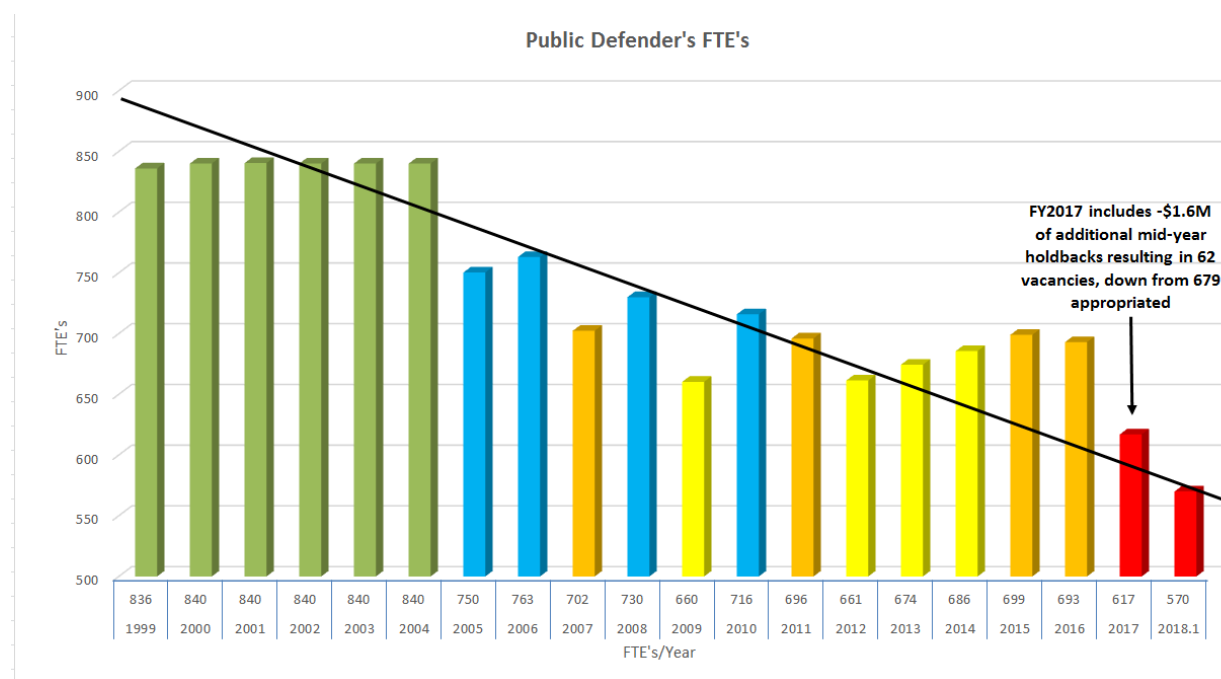
Because of holdbacks incurred during FY17, we currently have 62 vacancies at all levels of the Office, which have affected critical services and lowered our ability to ensure effective representation of our clients. Cases are taking longer to resolve because of staff shortages; our clients are not being properly served, and this situation will worsen dramatically if the proposed cuts are implemented to the FY18 budget. The Office has suffered budget cuts repeatedly over the years, and we have no ability to weather additional reductions. If the proposed budget cuts are implemented, I may have no choice but to refuse appointments to new criminal and child protection cases, and close divisions of the Office, in order to provide competent representation to those clients we currently serve.

History of Budget Cuts throughout the Office

The history of the Office indicates that the Public Defender has more than shared the burden of fiscal problems in the last few years. As Commissioner Silvestri stated on October 10, 2017, he and others on the Board are aware that not all offices are equal, and not all offices have been cut equally in the past.

As the chart below reflects, in FY04 the Office had 840 budgeted positions. By FY17, that number had reduced to 679. The President's recommendation for FY18 is 680 FTEs. With the proposed 10% reduction, however, the Office would be left with approximately 570 FTEs, by eliminating vacancies and issuing layoffs. Due to the composition of our Office, the vast majority of staff are front line attorneys. A 10% reduction, under any scenario, would require layoffs of a significant number of attorneys, leaving this Office with fewer than 380 attorneys remaining to handle the flood of clients who we service. This would be an insufficient number of attorneys to minimally staff every courtroom and court call throughout the County.

As the chart also reflects, the downward trend in the staff levels is evident. A 10% cut for FY18 would result in a staff level that is 22% lower than FY08. It is 16% lower than the staffing level budgeted for FY17. Comparing FY18 to the staffing level when I took office as the Public Defender in 2015, the proposed reduction would be 18%. The proposed cut is out of proportion to the needs of our clients, but also is disproportionate to past history.



How we got to the President's recommendation for FY18

This Office submitted its original FY18 budget request on July 28, 2017, in the amount of \$81,240,434. Our request sought to retain all vacancies, while additionally funding the new responsibility given to the Public Defender of appearing at police stations throughout Cook County and defend those who request counsel.

However, in working with the President and the Budget Department, we agreed to forego the additional personnel (equaling \$2.8 million), staffing the Office with existing resources. We also reduced non-personnel line items (equaling \$1.5 million), gave up six vacant positions, and reduced several other vacancies to entry-level positions (saving \$500,000). As a result of these agreed concessions, we reduced our budget request by approximately \$5 million. Our current request for FY18 is \$ 76,069,750.

Legal Obligation to Effectively Represent Clients

The Sixth Amendment provides, “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” In 1963, the Supreme Court of the United States held that the Sixth Amendment was a fundamental right, and was obligatory on the states. As a result, state trial courts were required to provide counsel to anyone charged with a felony. *Gideon v. Wainwright*, 372 U.S. 335 (1963). The obligation to provide counsel for those charged with misdemeanors was recognized by the Supreme Court in *Argersinger v. Hamlin*, 407 U.S. 25 (1972). Similarly, the Supreme Court held that counsel must be provided, free of charge, to juveniles (*In re Gault*, 387 U.S. 1 (1967)), and to parents facing the loss of their children to the state (*Santosky v. Kramer*, 455 U.S. 745 (1982)).

Illinois’ statutes mirror these constitutional rulings in both the Public Defender and Appointed Counsel Act (55 ILCS 3-4000 et seq.), the Criminal Code of Procedure, and the Juvenile Court Act. By statute,

The Public Defender, as directed by the court, shall act as attorney, without fee, before any court within any county for all persons who are held in custody or who are charged with the commission of any criminal offense, and who the court finds are unable to employ counsel.

The Public Defender shall be the attorney, without fee, when so appointed by the court under Section 1-20 of the Juvenile Court Act or Section 1-5 of the Juvenile Court Act of 1987 or [705 ILCS 405/1-20 or 705 ILCS 405/1-5] by any court under Section 5(b) of the Parental Notice of Abortion Act of 1983 for any party who the court finds is financially unable to employ counsel.

55 ILCS 3-4006.

The Criminal Code of Procedure (725 ILCS 5/113-3) provides that:

- (a) Every person charged with an offense shall be allowed counsel before pleading to the charge. . . .
- (b) In all cases, except where the penalty is a fine only, if the court determines that the defendant is indigent and desires counsel, the Public Defender shall be appointed as counsel.

Section 1-5 of the Juvenile Court Act (705 ILCS 405/1-5) provides that:

- (1) At the request of any party financially unable to employ counsel, with the exception of a foster parent permitted to intervene under this Section, the court shall appoint the Public Defender or such other counsel as the case may require.

This provision applies to both juveniles charged as delinquents and to parents facing the loss of their children to the State of Illinois.

More than merely providing an attorney to someone who is poor and charged with a crime, the obligation goes a step farther – counsel who is provided, free of charge, must give effective representation. *Strickland v. Washington*, 466 U.S. 668 (1984). Effective representation requires an attorney trained in the field of criminal defense.

In both Florida and New York, for example, lawsuits were filed because the number of public defenders handling cases was insufficient for the vast number of cases involved. In appeals to dismiss both lawsuits, the highest court in Florida and New York respectively, agreed that the lawsuits should go forward, because there was either ineffective representation or such inability to defend properly that there was “nonrepresentation.” See *Public Defender v. State*, 115 So.3d 261 (Fla. 2013), and *Hurrell-Harring v. New York*, 930 N.E.2d 217 (N.Y. 2010).

Case law and state statutes therefore require that every person be provided with effective legal representation, and additionally require that the County and the Public Defender fulfill their obligation in ensuring that this occurs.

Snapshot of Current Workload Obligations

The Office is required to staff all criminal, traffic, juvenile, and child protection courtrooms and court calls in Cook County. Here is a snapshot of the various courts we must cover:

Felony Trial Division at 26th Street (~7,000 cases per month pending)
32 felony courtrooms + 1 preliminary hearing courtroom (“PH”) + 1 Central Bond Court + 1 presiding judge call + various specialty calls = 36+ court calls

Juvenile Justice (~3,000+ delinquency cases per month pending)
13 courtrooms

Civil (~3,100 child protection cases per month pending)
13 courtrooms

First Municipal (~4,000 misdemeanor/traffic/domestic cases per month pending)
5 misdemeanor + 5 PH + 6 domestic violence (“DV”) + 7 traffic courtrooms = 23 court calls

Bridgeview (~1,900 cases per month pending)
6 felony + 7 misdemeanor + 1 specialty call = 14 court calls

Markham (~2,700 cases per month pending)
5 felony + 1 bond + 1 DV + 5 misdemeanor/traffic + 1 juvenile = 13 court calls

Maywood (~2,600 cases per month pending)
3 felony + 8 misdemeanor + 1 DV + 2 specialty calls + 1 PH = 15 court calls

Rolling Meadows (~1,200 cases per month pending)
2 felony + 1 PH + 1 motion + 6 misdemeanor + 1 DV + 1 specialty call = 12 court calls

Skokie (~1,200 cases per month pending)
6 felony + 5 misdemeanor + 1 DV + 3 specialty calls = 15 court calls

Total separate courtrooms/court calls that Public Defender must cover = **154**

In addition to staffing courtrooms throughout the County, we have the following additional obligations that require staffing:

- Homicides are currently defended by 40 specially trained senior attorneys, who travel around the County. This is a necessity given the unfortunate murder rate.
- Judges often appoint the Public Defender as counsel for additional co-defendants. To provide representation while doing our best to avoid conflicts of interest, we have a Multiple Defendant Division.
- In Child Protection Court, judges appoint us to represent the second parent in a child protection case. To provide representation while doing our best to avoid conflicts of interest, we have a Child Protection Conflict Division.
- Pursuant to a supervisory order entered in 2002, the Public Defender is obligated to serve as counsel for all indigent child protection appeals.
- Pursuant to Illinois law (the Post Conviction Hearing Act, 725 ILCS 5/122-1 et seq.), counsel must be appointed to all indigent post-conviction petitions. The Office currently represents approximately 840 post-conviction clients.

- Based on the current and evolving forensic science, we have a unit of 7 attorneys with specific forensic knowledge to assist in cases dealing with scientific evidence.
- On March 14, 2017, Judge Evans ordered that the Public Defender is “deemed appointed” and authorized to appear at a police stations whenever someone in custody requests counsel throughout the County.

Direct Impact the Proposed Cuts will have on the Office

In order to absorb a 10% reduction, the Office would have to reduce its staff by approximately 110 positions, or 16% of the President’s FY18 recommendation of 680 FTEs.

Since December 1, 2016, we have been prevented in filling vacancies due to holdbacks. In FY17, the President recommended and the Board passed a budget for this Office in the amount of \$75,887,147, funding 679 FTEs. In May 2017, there was a 1% holdback due to a revenue shortfall, thereby preventing us from filling vacancies. In July 2017, after a temporary restraining order was entered concerning the sweetened beverage tax, there was an additional 5% holdback, thus our inability to fill vacancies persisted. As a result, since December 1, 2016, we have been permitted to fill only 4 vacancies, leaving 62 vacant positions. As of the date of this letter, we have been unable to fill 40 attorney positions, 5 attorney manager positions, 4 investigator positions, and 13 support staff positions. The list of vacancies, meanwhile, is growing.

More resignations and retirements are anticipated. Even though we were budgeted for 679 FTEs, the Office currently has 419 attorneys, 54 investigators, and 95 support staff. The Office also has approximately 50 management staff. Compare that to the number of cases handled during the eight months from January through August 2017:

	New case appointments January through August 2017	Cases disposed January through August 2017	Pending as of August 31, 2017
Felonies	27,338	12,995	12,785
Homicides	158	134	721
Misdemeanors	64,400	49,484	8,303

Extrapolating these numbers for the entire calendar year of 2017, the Office can expect to be appointed to a total of 41,007 felonies, 237 homicides, and 96,600 misdemeanors. At the same time, the Office can expect to dispose of 20,992 felonies, 201 homicides, and 74,226 misdemeanors. The number of pending cases will increase, because dispositions are not keeping pace with appointments. Thus, with the current depleted staffing levels, fewer cases are being disposed and cases are taking longer to resolve.

➤ **Attorneys**

For FY17, the Office was budgeted for 174 attorneys to handle felony representation, and 104 misdemeanor attorneys to handle misdemeanor representation. But due to our inability to fill vacancies due to holdbacks, we currently only have 162 felony attorneys and 95 misdemeanor attorneys. If we were at full staffing levels for FY17, each felony attorney would handle an average of 230 felonies during the year, and each misdemeanor attorney would handle an average of 715 misdemeanors during the year. However, due to attrition and the inability to hire throughout the year, each felony attorney is handling an approximate average of 255 cases during the year, while each misdemeanor attorney is handling an approximate average of 780 cases. The current caseloads far exceed best practice standards. The American Bar Association Guidelines for Indigent Defense Caseloads provides that a public defender shall handle no more than 150 felonies or no more than 400 misdemeanors in any given year.

Homicide representation similarly cannot suffer any reductions. According to the Compendium of Standards for Indigent Defense Systems from the United States Department of Justice, homicide workloads should not exceed 15 murder cases per attorney at a time. The Office's 40 homicide attorneys currently have an average of 19 cases each, with the number of homicide clients increasing monthly. A potential 10% reduction would sweep away the 7 homicide attorney vacancies, eviscerating our ability to provide effective assistance of counsel for the most serious criminal offenses.

➤ **Attorney Managers**

Attorney managers supervise the day-to-day operations of the Office. Their duties include but are not limited to: assisting the attorneys they supervise as co-counsel; conducting monthly file reviews; performing biannual performance evaluations; serving on hiring and promotion panels for the Office; fielding and addressing issues and complaints from clients, family, and the public; providing monthly operation and litigation reports; assigning cases; handling internal labor grievances and disciplinary actions; and staffing the courtrooms when the attorneys under their supervision are unavailable. Currently, attorney management is understaffed. For example, the six managers at the Felony Trial Division oversee 92 attorneys, or an average of 15 attorneys per manager. With each attorney handling over 100 felony cases at any given time, each manager is monitoring more than 1,500 criminal cases, in addition to the duties listed above, a herculean task that inevitably will lead to things falling through the cracks. They are the backbone that supports the operation of this Office, but currently we are understaffed by 5 attorney managers, due to the inability to fill vacancies. A budget cut would eliminate these critical and sorely needed positions.

➤ **Investigators**

The current situation for our investigators is even worse. In any given month, the investigative staff in our Office is requested to conduct approximately 7,000 investigations (which encompass locating and interviewing witnesses, photographing crime scenes, testifying in court, transporting witnesses, etc.). In addition, during any given month our investigators

(currently staffed at 54 for the Office) will serve approximately 3,000 subpoenas. The number of investigation and subpoena requests far exceeds the capacity that our investigative staff can effectively fulfill in a timely manner, thereby further delaying the progress and resolution of criminal cases. Therefore, a reduction to our investigation staff would be devastating.

➤ **Support Staff**

The support staff are the engine that keeps the Office functioning properly; they prepare legal documents and files for the attorneys, track caseloads and collect data and statistics necessary to effectively manage and monitor caseload levels. They coordinate between court personnel and attorney supervisors to ensure courtrooms are staffed with attorneys; process payroll and other vendor payments; and they serve as the primary point of contact between our Office and our clients, witnesses and family members. They also manage timekeeping for the Office. The list can go on and on. Yet despite the critical role they play to ensure our Office functions, they are severely short staffed and are unable to provide basic support at several of our offices. Despite being a law firm, the Office lacks much needed paralegals or law clerks. Three of our offices do not have receptionists. As our support staff continues to dwindle, we are losing specialized skills needed in accounting and accounts payable. Yet, in spite of the severe shortage in support staff, the Office's support needs continue to evolve as we take on police representation, holiday and weekend bond court, records management, etc. Most recently, the County made a multi-million dollar investment in a new case management system for our Office, eDefender. If we are unable to hire system analysts, this will hinder our ability to maximize the benefit of this investment. Our support staff simply cannot realistically manage all of their duties effectively.

Direct Impact the Proposed Cuts will have on the County

The volume of cases relative to the current budgeted staffing levels is already below effective representation standards. A 10% cut would render representation for all the Office's clients impossible. In order to meet such a reduction, all 62 vacancies would be eliminated, plus approximately another 45 staff would have to be laid off, the majority being front line attorneys. Courtrooms would be unstaffed and caseloads would be astronomical. The only alternative to avoid lawsuits from clients who are not receiving proper representation would be to refuse additional appointments, and to close divisions of the Office in order to provide proper attention to those clients we can ably represent.

The result would be significantly higher costs for the County, since the Sixth Amendment right to counsel is not optional. It is the County's responsibility to provide counsel for everyone who is indigent. Costs for lengthier stays in the jail would increase. In addition, private counsel would have to be appointed and paid, and those costs would substantially be more than the cost savings from cutting this Office's budget.

In the FY17 budget for the Office, the 174 felony attorneys were budgeted at \$18,145,845, while the 104 misdemeanor attorneys were budgeted at \$9,036,821. Looking at the extrapolated number mentioned above, 174 attorneys disposing of 20,992 felonies equals a

cost of \$864 per disposed case (without fringe costs); 104 attorneys disposing of 74,226 misdemeanors equals a cost of \$122 per disposed case (without fringe costs).

Without sufficient assistant public defenders, private counsel will have to be appointed. The County rate for paying counsel hired as a Special State's Attorney (to defend a county employee in a civil lawsuit) starts at \$185 per hour. While the rate for private counsel in a criminal case is published as \$40 for in-court services (pursuant to 725 ILCS 5/113-3(c)), there is a commonly invoked exception that permits higher hourly fees if "the trial court certifies that such payment is necessary to provide fair compensation for protracted representation." There is also no ceiling on the number of hours that private counsel can work on any particular case. For example, in a recent media high profile case that is currently pending, 3 separate private counsel were appointed at the rate of \$125 an hour, with no cap on how many hours may be devoted to the clients' criminal defense.

The Public Defender is the most cost-effective legal representation in the County. Because cuts to the Public Defender's budget will render services unavailable, costs to the County will substantially increase.

Reducing our staff so severely will render the Public Defender unable to accept all cases or all clients. Staff can be shifted, but the Office will not have enough to cover all 154 court calls. We will likely have to close divisions within our Office in order to effectively allocate our resources. If, for example, we maintained staff in every division, it would be skeletal. One attorney would have to float between several courtrooms. The delays in resolving cases would increase, the average length of stay at the County Jail would skyrocket, and the likelihood of ineffective representation of counsel would increase.

As a threshold matter, closing divisions or maintaining skeletal divisions creates a very real risk of a class action lawsuit being filed against the Public Defender and the County. Class action lawsuits have been filed in Fresno (California), New Orleans, Luzerne County (Pennsylvania), Idaho, Missouri, New York, and Utah. The suit in New York settled, the suit in Luzerne County gave clients the right to sue to enforce funding, and the Idaho Supreme Court reinstated an ACLU lawsuit alleging underfunding. The others are still pending. A class action filed against the Public Defender or Cook County will likely follow along similar lines.

Conclusion

In conclusion, we simply cannot accommodate any further budget cuts, beyond what we have already incurred, without subjecting the County and our Office to significant legal exposure due to our inability to fulfill our Constitutional and statutory mandates to provide effective assistance of counsel. The proposed budget cuts may save the County money in the short term, but these immediate savings will come at the cost of greater expense in the future. Most importantly, the indigent accused who rely on Public Defender services to preserve their liberty will suffer. They deserve nothing less than a properly funded Public Defender office.

The information provided above paints the grave situation that will occur if the proposed cuts to our FY18 budget are implemented. Please don't hesitate to contact me if you have any questions or need additional information.

Sincerely,



Amy P. Campanelli
Public Defender of Cook County

Cc: Toni Preckwinkle, President
Board of Commissioners
Ammar Rizki, Chief Financial Officer
Tanya Anthony, Budget Director