

ORLEANS PUBLIC DEFENDERS OFFICE
Restriction of Services Plan
Fiscal Year 2016

ORLEANS PUBLIC DEFENDERS VISION AND MISSION

Vision. The Orleans Public Defenders Office (OPD) exists to provide the citizens of Orleans Parish with the highest quality client-centered legal representation in Louisiana's criminal and juvenile justice system. Our vision is to create a community-oriented defender office built upon the zealous defense of the poor and indigent while acknowledging the strengths of clients, families and communities. OPD acts to 1) protect the guarantees of the Louisiana and United States Constitutions and maintain adherence to the rule of law, 2) foster a more open and inclusive society by increasing access to and protection within the courts for the poor and indigent, and 3) assist in the development and expansion of rehabilitation and alternative programs for clients and their families.

Mission. The mission of the Orleans Public Defenders Office is to provide each eligible client with client-centered legal representation of the highest quality – zealous, conscientious, caring, professional, ethical and skilled – whether in criminal, juvenile or municipal/traffic court.

INTRODUCTION

The Orleans Public Defenders Office (OPD) once again finds itself short of necessary funding to provide constitutionally-mandated legal defense for indigent defendants in FY2016. FY2015 Projections for locally-generated state and local statutory revenue are short of projections by more than \$300,000.¹ Additionally, as the state crisis in public defense funding has expanded, resulting in a greater reliance by the district on state supplemental assistance funding, the Louisiana Public Defender Board (LPDB) has been forced to reduce our state-appropriated funding by approximately \$900,000 in FY2016². In short, our user-pay criminal justice system is inadequate, unpredictable and unreliable, and hinders OPD's ability to keep up with the growing demands of our criminal justice system.

OPD's Restriction of Services Plan (ROS) this fiscal year will cause serious delays in the courts and potential constitutional crises for our criminal justice system in New Orleans if no solution is reached.

OPD will implement a number of cost-cutting measures over the course of FY2016. These measures are outlined below. Shortages in attorney resources and hiring freezes – in an already under-staffed office – are certain to raise caseloads – slowing case processing time, affecting the quality of service and jeopardizing the integrity of court proceedings. Indeed, staff shortages will likely result in OPD refusing appointments altogether, creating waitlists for representation. Criminal justice stakeholders should begin to feel the effects of the ROS in the late Summer and Fall of 2015, as attorney caseloads rise and contracted conflict representation is no longer available.

OPD does not come to this decision lightly, and we are sorry for the hardship this will undoubtedly cause our diligent and dutiful staff. More importantly, we are saddened and sorry for the hardship this will undoubtedly cause our clients and their families.

¹ The initial shortfall was \$300,000. The City of New Orleans budget proposal, however, has a scheduled increase of \$400,000. This eliminates the projected local revenue shortfall.

² The \$900,000 deficit is the difference between final appropriations (District Assistance Funds or "DAF") in FY2015 versus anticipated LPDB revenue in FY2016. Final revenues for FY2015 only became available on July 17, 2015. An unbudgeted (and welcome) additional \$200,000 was provided to OPD from LPDB at this time.

RESTRICTION OF SERVICES PLAN⁶

1. Revenue and Expenditure Projections: Fiscal Year 2016

For FY2015, OPD operated at a deficit. OPD spent an average of \$576,463 per month, resulting in a FY2015 deficit of approximately \$214,000. Maintaining this pace for FY2016, OPD would spend approximately \$6,917,554 in FY2016. This projected expenditure exceeds OPD's FY2016 projected budget by more than \$934,000.⁷ The major problem is revenue projections for FY2016 are down precipitously. Local court revenues are down across the board, and OPD's largest single source of local revenue (New Orleans Traffic Court) was down approximately \$300,000 in FY2015, prompting a revision downward of revenue expectations for FY2016. If the revenue landscape remains as anticipated, OPD will have to make approximately \$1 million in reductions (to an already lean budget) to avoid a deficit in FY2016.

2. Cuts and Restrictions

Outlined in this section are the cuts and service restrictions OPD will implement in FY2016. This plan will remain in force until OPD is capable of handling 100% the workload of the jurisdiction.

2.1. Hiring Freeze

OPD implemented a hiring freeze on July 1, 2015 in response to the current budget shortfall. This freeze will remain in place at least until the end of OPD's fiscal year (June 30, 2016). This hiring freeze means vacated positions will remain vacant. OPD honored offers of employment made prior to the institution of the freeze. The freeze also means OPD will not extend offers to grant-funded positions where funding is exhausted, the grant term concluded and no new additional funds are identified.

2.2. Capital Representation

OPD will eliminate capital conflict representation on July 1, 2015. Existing cases will continue to receive funding, but additional cases will be referred to State staff at the Louisiana Public Defender Board. As a consequence, OPD will not be in a position to handle any increase in capital prosecutions in this fiscal year.

2.3. Contract Conflict Representation⁹

OPD will stop contracting for new (non-capital) conflict cases when funds are exhausted. We project this will happen in mid- or late-November 2015. The OPD Conflict Division will remain intact, but will not accept cases beyond established workload limits. OPD will refuse appointments to cases beyond our means and in excess of state-mandated workload limits. Accepting cases for which we lack capacity is a violation of our ethical obligations to clients.

⁶ All OPD policies and procedures in existence prior to the FY2016 ROS Plan remain in force.

⁷ When the operational deficit from FY2015 is added, the real shortfall exceeds \$1.3 million dollars for FY2016.

⁹ As of July 27, 2015, OPD is still issuing conflict panel contracts. After receiving permission from the city to do so, OPD began using monies originally earmarked for specific conflicts (Group Violence Reduction Strategy or "GVRs" Clients) to pay for all conflicts. This makes available approximately \$230,000 for conflicts in FY2016. OPD anticipates falling \$130,000 short, however, of being able to fully fund our system of conflict panel representation.

This ethical obligation is codified in the District Defender's contract with the Louisiana Public Defender Board.

2.4. Workload Monitoring

OPD will closely monitor workloads throughout FY2016. I expect workload to rise over time to unacceptable levels. The situation is especially urgent as many attorneys already exceed manageable levels. Should this situation continue for an extended length of time, we expect to begin refusing new case appointments. As previously stated, accepting cases for which we lack capacity is a violation of our ethical obligations to clients.

2.4.1. OPD Workload

OPD confronts a workload like no other in the State. OPD represents all indigent individuals charged with a crime in Orleans Parish. For FY2015, OPD handled more than 20,000 cases, nearly 8,000 felonies. The Orleans Parish District Attorney boasts a case acceptance rate of greater than 90%. In addition, Orleans Parish maintains a trial rate well above the national and state average. Also, OPD maintains a workload that is perhaps the most serious in Louisiana. In 2014, OPD handled a caseload of 215 Life Without Parole (LWOP) cases. OPD also has 2 capital cases in a trial preparation posture. The total OPD capital caseload for FY2015 was 9 – double our internal capacity for such cases.¹⁰

2.5. Cuts to Operational Expenditures

OPD also implemented cuts to operational expenses totaling \$158,000. Additionally, OPD continues to search for ways to achieve savings by cutting expenses and increasing efficiencies. If these cuts remain, OPD will encounter shortages in funding for expert witnesses, conflict representation, capital representation and training. For FY2016, OPD instituted the following reductions to expenditures:¹¹

Category	FY2016 Reduction
<i>Expert Witness</i>	\$40,000
<i>Capital Contract Representation</i>	\$40,000
<i>Conflict Representation (non-Capital)</i>	\$20,000
<i>Equipment</i>	\$10,000
<i>Office Repair and Maintenance</i>	\$8,000
<i>Phone/Postage/Utilities/Internet</i>	\$10,000
<i>Office Supplies</i>	\$10,000
<i>Travel</i>	\$20,000

3. Effects of Service Restrictions and The Triangle of Public Defense

OPD, like all public defender organizations must operate within the triangle of public defense. On one side of the triangle is our constitutional obligation. The 6th Amendment to the U.S. Constitution guarantees every person the right to competent effective counsel at each stage of criminal proceedings. On another side of the triangle is our ethical obligation. Lawyers (including public defenders) may not allow caseload or resources to impair client representation.

¹⁰ Not all capital arrests remained capital in FY2015, and OPD is still responsible for 1 capital conflict case. In addition to the open capital conflict case, OPD maintains a workload of 2 post-indictment capital cases.

¹¹ The reductions represent costs in FY2016 versus costs in FY2015.

That is, OPD cannot ethically allow excessive caseloads or poor resources to affect our duties to clients. On the third side of the triangle is our obligation to maintain compliance with state professional standards. The LPDB maintains and enforces specific standards of practice for public defenders.

Staff reductions will increase caseload and workload for existing lawyers, investigators and support staff. To maintain ethical and constitutional workloads, cases entering the system which would send our legal staff above allowable limits, will be placed on a waitlist until additional funding or resources become available. If this reality persists for a long enough period of time, it will mean increased lengths of stay in jail, the release of clients and case dismissals. It will also make litigating these cases more difficult for all involved.

Conflict and Capital Conflict cases will likely come to a halt as OPD will stop issuing new conflict contracts until additional funding can be identified. Again, these clients will be placed on a waitlist for representation. If this reality persists for a long enough period of time, it will mean the release of clients and case dismissals.

4. Monitoring ROS Impacts

The OPD Chief District Defender will provide weekly financial and operational reports to LPDB Executive Staff and the Board for as long as ROS conditions persist. These reports will include but will not be limited to tracking caseload, workload, revenues and expenditures. The District Defender report will also include information on the overall operations and initiatives of OPD while in ROS.

5. OPD Mitigation of Service Restrictions

OPD will continue to reach out to the private bar to assist as needed. However, prospects for pro bono assistance with OPD's caseload are grim. After meeting with Mark Cunningham, Louisiana State Bar Association (LSBA) President for 2015-2016, it is clear the established private bar – while sympathetic – has no intention of providing any coordinated relief for state's failure to fully fund public defense. To the point, the LSBA House of Delegates passed a resolution labeling such pro bono appointments a "tax" on private lawyers – essentially calling forced appointments a taking and an unfair tax on private lawyers.