

JOSEPH ALLEN, STEVEN AYRES,
ASHLEY HURLBURT , RORY KEVIN
GATES, JAMES HOWARD, DEMARCUS
MORROW, RODNEY WALLER, KEITH
ARCEMENT, FREDERICK BELL,
GENARO CRUZ GOMEZ, SAM
YBARRA, MICHAEL CARTER, AND
JAMES PARK, ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

VS.

JOHN BEL EDWARDS IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF THE
STATE OF LOUISIANA, ZITA JACKSON
ANDRUS, CHRIS L. BOWMAN,
FLOZELL DANIELS, JR., THOMAS D.
DAVENPORT, JR., PATRICK J.
FANNING, W. ROSS FOOTE,
KATHERINE E. GILMER, MICHAEL C.
GINART, JR., FRANK HOLTHAUS,
DONALD W. NORTH, AND MOSES
JUNIOR WILLIAMS, IN THEIR
OFFICIAL CAPACITIES AS MEMBERS
OF THE LOUISIANA PUBLIC
DEFENDER BOARD; AND JAMES T.
DIXON, JR., IN HIS OFFICIAL
CAPACITY AS THE LOUISIANA STATE
PUBLIC DEFENDER,

Defendants.

DOCKET NO. 655079

HONORABLE TODD HERNANDEZ
19th JUDICIAL DISTRICT COURT
EAST BATON ROUGE PARISH
STATE OF LOUISIANA

FILED: _____

DEPUTY CLERK

**FIRST AMENDED VERIFIED PETITION FOR CLASS CERTIFICATION AND
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Steven Ayres, Ashley Hurlburt, Demarcus Morrow, Keith Arcement, Frederick Bell, Michael Carter, and James Park file this Amended Verified Petition for Class Certification and Declaratory and Injunctive Relief against Defendant Governor Jon Bel Edwards, State Public Defender James T. Dixon, and the appointed members of the Louisiana Public Defender Board ("LPDB"), all in their official capacities.

SUMMARY OF LAWSUIT

1. In this class action lawsuit, Plaintiffs allege that the poor in Louisiana are denied access to effective and meaningful attorney representation when facing criminal

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DEPUTY CLERK OF COURT

charges and, therefore, do not stand “equal before the law.” Plaintiffs support their claim with admissions by the Louisiana Public Defender Board (“LPDB”) and State Public Defender and decades of findings, studies, and investigations by the Louisiana Supreme Court, the United States Department of Justice, social scientists, law professors, and government officials from both sides of the aisle describing the Louisiana public defense system alternatively as “in shambles,” “chronic[ally] underfunded,” “hopelessly underfunded,” “a systematic failure by any measure,” “on the verge of collapse,” “beyond the crisis stage,” “terrible,” and “abysmal.” On December 27, 2016, the Chief Justice of the Louisiana Supreme Court declared an “emergency shortfall” in public defense funding. Most recently, on January 31, 2017, the LPDB described its current “funding stream” as “inadequate, unreliable, and unstable” The same day, United States District Judge James J. Brady declared that it “is clear that the Louisiana legislature is failing miserably at upholding its obligation under *Gideon*. Budget shortages are no excuse to violate the United States Constitution.” Quoting Orleans Parish Criminal District Court Judge Arthur Hunter, Judge Brady went on to say that a criminal defendant’s “constitutional rights are not contingent upon budget demand, waiting lists, and failure of the legislature to adequately fund indigent defense.”

2. Plaintiffs also support their claim with their own stories. Each of them is indigent and facing charges which could, in most cases, lead to their imprisonment for years or decades. Each has had an attorney appointed to represent them in court, but the representation they are receiving fails to meet minimum constitutional or professional ethical standards by any measure. Many never had a confidential meeting with their attorneys. Some have met their attorneys only in passing. None of the attorneys have spoken with their clients in a meaningful way about their defenses or the strength of the case against their client, identified and secured favorable witnesses and evidence, filed appropriate pretrial motions, or provided a voice for their clients in court. Many of them have been deprived of even basic information about the charges against them or the expectations for trial. Their experiences are not unique and the product of the structural barriers to effective representation in Louisiana. The lack of representation experienced

by Plaintiffs, and the prejudice which flows from it, is typical of non-capital criminal adult defendants with court-appointed lawyers and is an accepted practice in Louisiana.

3. The evidence leaves no doubt that Louisiana does not have a public defense system that is effective statewide; that the traditional markers of effective representation, such as meaningful adversarial testing of the prosecution's case, timely and confidential consultation with clients, and appropriate case investigation, are either absent from public defender services or significantly compromised; and that judicial intervention is needed to remove the structural barriers to the right to counsel. Without this court's intervention, Plaintiffs will continue to face and suffer irreparable injury and prejudice.

4. Plaintiffs ask the Court to: (1) certify a class action for all persons who are indigent and facing criminal charges in Louisiana for non-capital offenses punishable by imprisonment; (2) declare that Plaintiffs and the Class have been denied the right to counsel and equal protection under the United States and Louisiana Constitutions; (3) enter an injunction prohibiting Defendants from maintaining a public defense system where the traditional markers of effective representation are absent or significantly compromised and (4) appoint a monitor to supervise the public defense system until such time as it determines that Defendants have implemented a system that provides effective representation for the poor state-wide and dismantled the structural barriers to effective representation which exist in Louisiana. Plaintiffs do not seek an order releasing prisoners awaiting trial or to intervene in any criminal proceedings.

5. Attached to this Petition are the LPDB Annual Reports for 2014, 2015 and 2016; documents authored by the State Public Defender; and third-party studies and reports, which are submitted as Exhibits 1 to 98 of the Appendix in support of the Verified Petition and incorporated by reference. For the convenience of the Court, an index of these and other materials is included at the beginning of the appendix. Hereafter such documents referred to and incorporated by reference are designated as "App. ___."

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to Article 5, Sections 1 and 16 of the Louisiana Constitution; the inherent judicial power emanating from the constitutional separation of powers in Article 1, Sections 1-2 of the Louisiana Constitution; and the inherent power of the courts to regulate the standards governing the conduct of attorneys.

7. This suit is filed against the Governor of the State of Louisiana, officers of a state regulatory board, and an employee of a state agency for conduct arising out of the discharge of their official duties. The state capitol is located within this judicial district. Venue is, therefore, proper in under LA-R.S. § 13:5104(A).

PLAINTIFFS

8. Plaintiffs Steven Ayres, Ashley Hurlburt, Demarcus Morrow, Keith Arcement, Frederick Bell, Michael Carter, and James Park are each of the age of majority, are charged with non-capital offenses in Louisiana, and have had counsel appointed to represent them because they cannot afford the services of an attorney.

DEFENDANTS

9. Defendant Jon Bel Edwards is sued in his official capacity as the Governor of the State of Louisiana. Governor Edwards is constitutionally and statutorily responsible for the oversight of the Louisiana Public Defender Board and responsible for proposing an executive budget, including a budget for LPDB. Governor Edwards has the authority to designate funds allocated to LPDB as “discretionary” or “non-discretionary.” He also is constitutionally authorized to call extraordinary sessions of the Louisiana legislature, and to line-item veto budget appropriations passed by the legislature.

10. Defendants Zita Jackson Andrus, Chris L. Bowman, Flozell Daniels, Jr., , Patrick J. Fanning, W. Ross Foote, Katherine E. Gilmer, Michael C. Ginart, Jr., Frank Holthaus, Donald W. North, Ami E. Stearns, and Moses Junior Williams, are sued in their official capacities as the duly appointed members of LPDB.

11. Defendant James T. Dixon Jr. is sued in his official capacity as the State Public Defender. Mr. Dixon is employed by LPDB and is statutorily responsible for administering the statewide public defender system for the delivery of legal services.

FACTUAL ALLEGATIONS

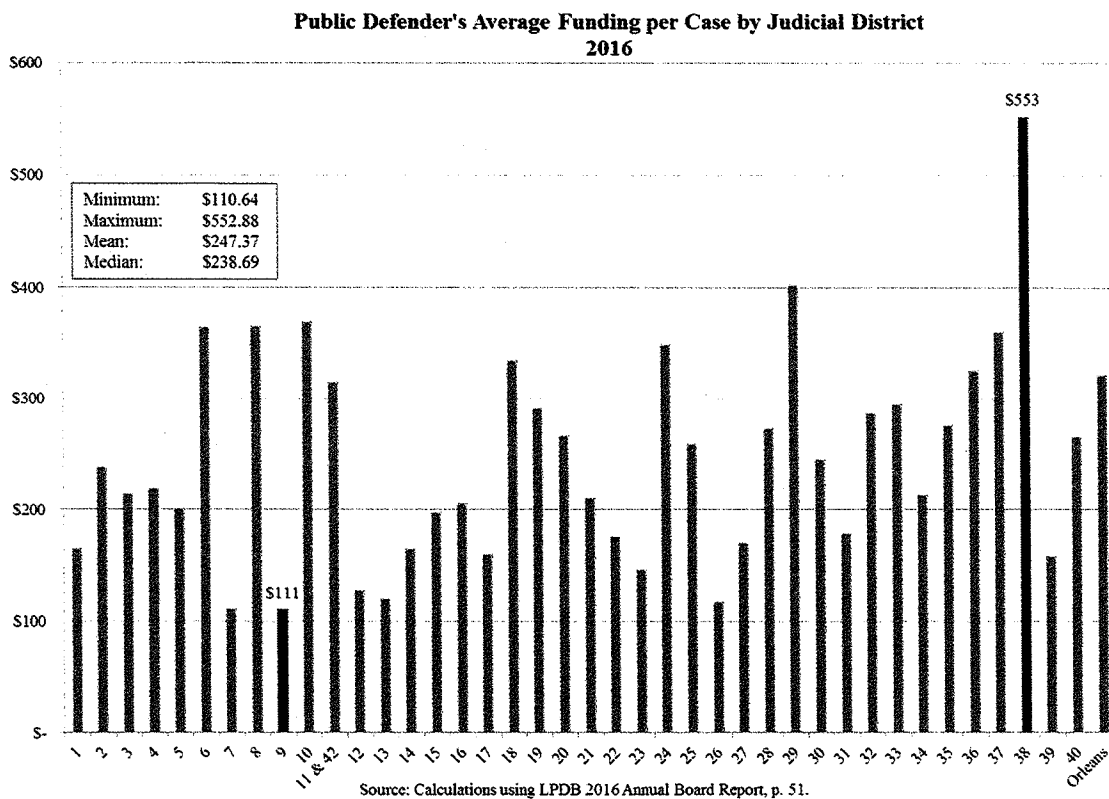
12. The Sixth and Fourteenth Amendments of the United States Constitution and Section 13 of the Louisiana Constitution of 1974 guarantee the right to meaningful and effective assistance of counsel to every person facing criminal charges punishable by imprisonment. Without access to the effective assistance of counsel, the poor stand alone against the full unchecked power of the State. They are denied not only their right to a fair trial, but are powerless to exercise the other fundamental rights guaranteed by the Constitution, such as the right to speedy trial, to confront witnesses, to impartial juries; the rights against unreasonable search and seizure and self-incrimination; and the right to be free from excessive bail, fines, and cruel and unusual punishment.

13. As the United States Supreme Court said more than 50 years ago in its decision in *Gideon v. Wainwright*, the right to counsel exists because “our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law” and “[t]his noble ideal cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him.”

I. THE LOUISIANA PUBLIC DEFENSE SYSTEM IS NOTORIOUSLY INADEQUATE, UNSTABLE, AND UNRELIABLE.

14. In the Louisiana Public Defender Act, LA-R.S. § 15:141 *et seq.*, the Louisiana Legislature expressly delegated its constitutional obligation under Article 1, Section 13 of the Louisiana Constitution to establish “a uniform” public defense system to the Louisiana Public Defender Board. Pursuant to this Act, LPDB is statutorily required to maintain a system for the cost-effective delivery of legal services at state expense and promulgate and enforce “mandatory statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state.” The Act further requires LPDB to implement and enforce standards to ensure continuity of representation, substantive and meaningful communications with the client, supervision of the chief defenders in each of Louisiana’s forty-two judicial districts, and effective client representation.

15. What public defenders actually receive in funding bears no relationship to the amount of money that would be needed for LPDB to implement the Louisiana Public Defender Act or to meet the demand for public defender services. In 2016, the amount of money available to a district office to defend a case from beginning to end ranged on average from a low of \$111 in the 26th Judicial District to a high of \$553 in the 29th Judicial District. Across the forty-two judicial districts the median funding level per case was \$238.69 – an amount well-below what many lawyers charge for a single hour of work.



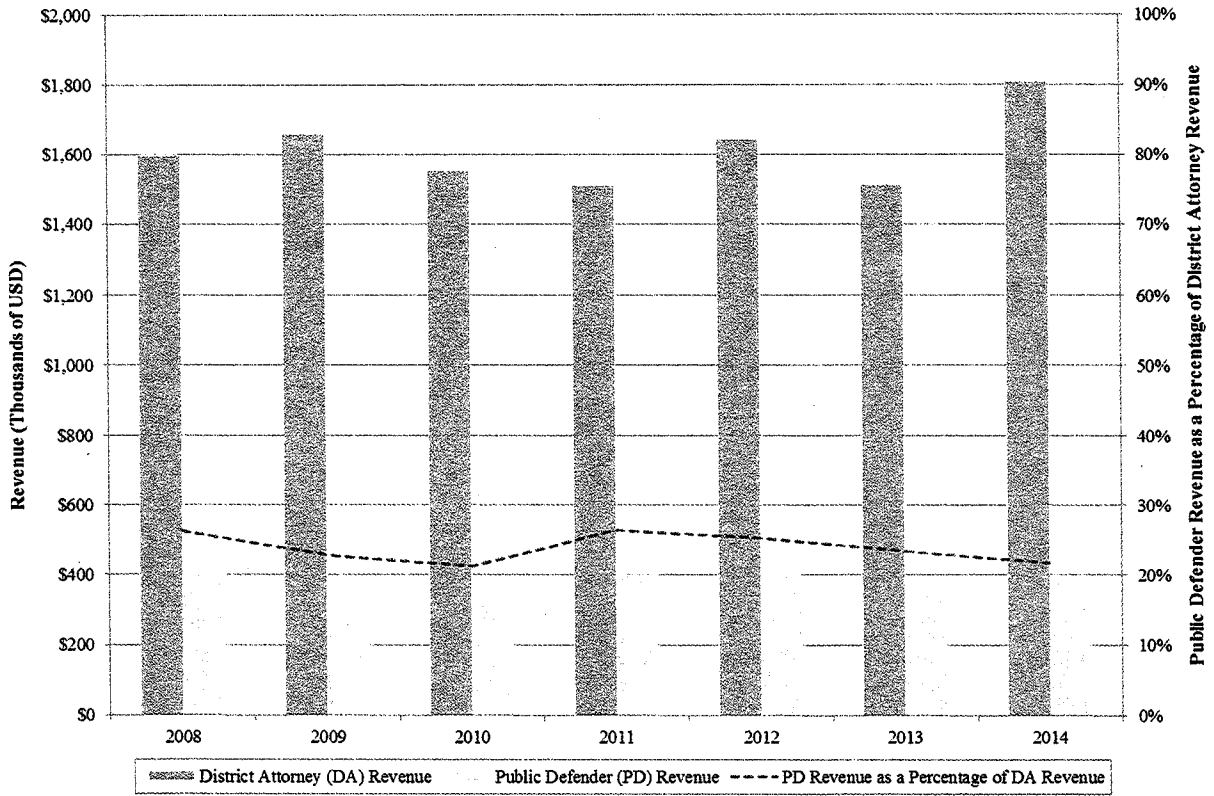
16. The insufficient funding for public defense can be traced to how the funding system is structured. The level of funding for each district office depends primarily on a user-pay system of local fines and fees and, as such, varies widely based on geography and the number of traffic tickets written in a particular judicial district in any given year. No other state in the United States relies primarily on local court fees and fines to fund public defender services. Although the Louisiana Legislature supplements local funding sources with state funds, the appropriation from the State falls far short of what is needed to fund a functioning public defense system. In 2016, at least thirty-three of the forty-two public defender offices stopped accepting cases or placed

clients – many of whom were incarcerated – on waiting lists for extended periods of time.

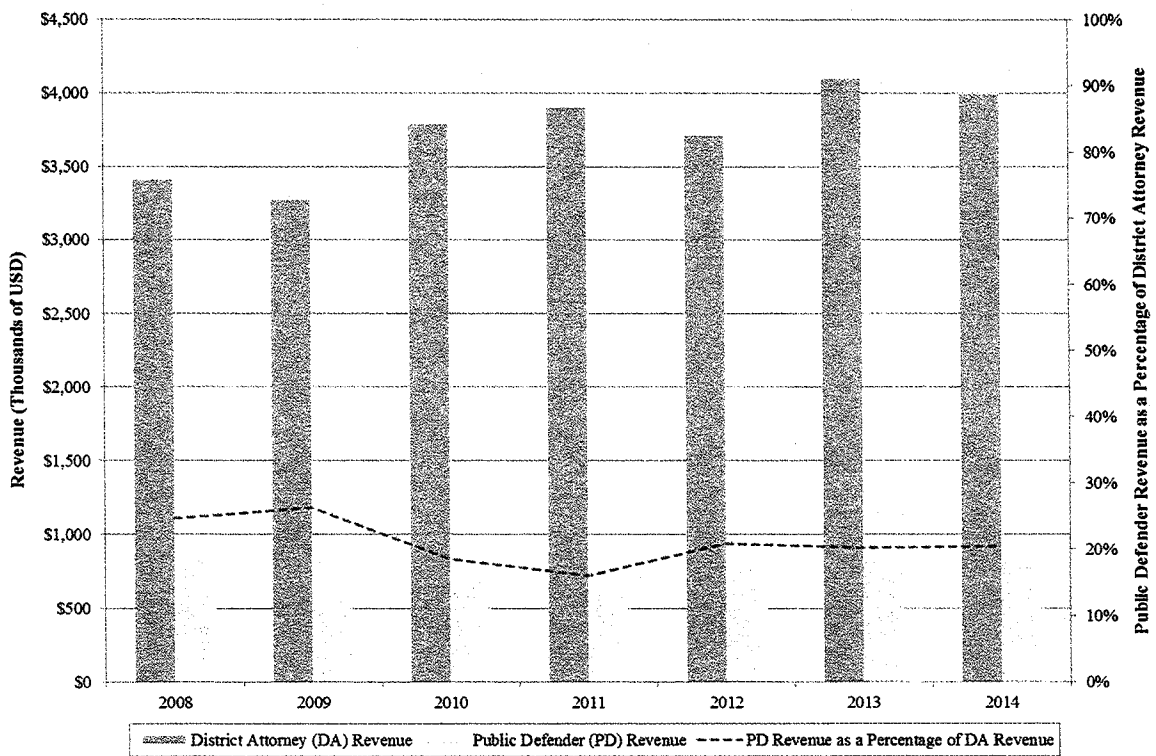
17. In stark contrast, district attorneys often receive more than twice – and sometimes three or four times – the funding for public defender services in the same district. In Orleans Parish, the District Attorney has historically had a budget more than twice the size of the Orleans Defenders. Meanwhile, the Orleans Defender has so little money to hire staff and secure other resources that a law professor recently testified: “I’m very troubled by the situation this public defender’s office is in. To call this a ‘justice system’ is really a misnomer. . . . I believe this entire office is operating as a conflict of interest. The lawyers here are compromising some clients in order to represent others. They make a decision to triage, and triage is a conflict of interest. This is a problem now that is a judicial problem, and I believe needs to be dealt with on that level.” (App. 48).

18. With only a handful of exceptions, the funding disparities described above are typical of judicial districts throughout Louisiana, and they have only increased over time. In the worst districts, defenders receive less than 20 percent of the funding received by prosecutors. Even in the one or two instances where public defenders receive funding that is at all comparable to a district attorney (a function of being located near heavily trafficked and ticketed interstate highways), the inability of LPDB staff to supervise and train attorneys in these districts has resulted in a standard of practice which does not meet constitutional standards or comply with the Louisiana Rules of Professional Conduct. The following graphs illustrate the disparity in funding for the district attorney and district defender in the Second, Seventeenth, Eighteenth and Twentieth Judicial Districts.

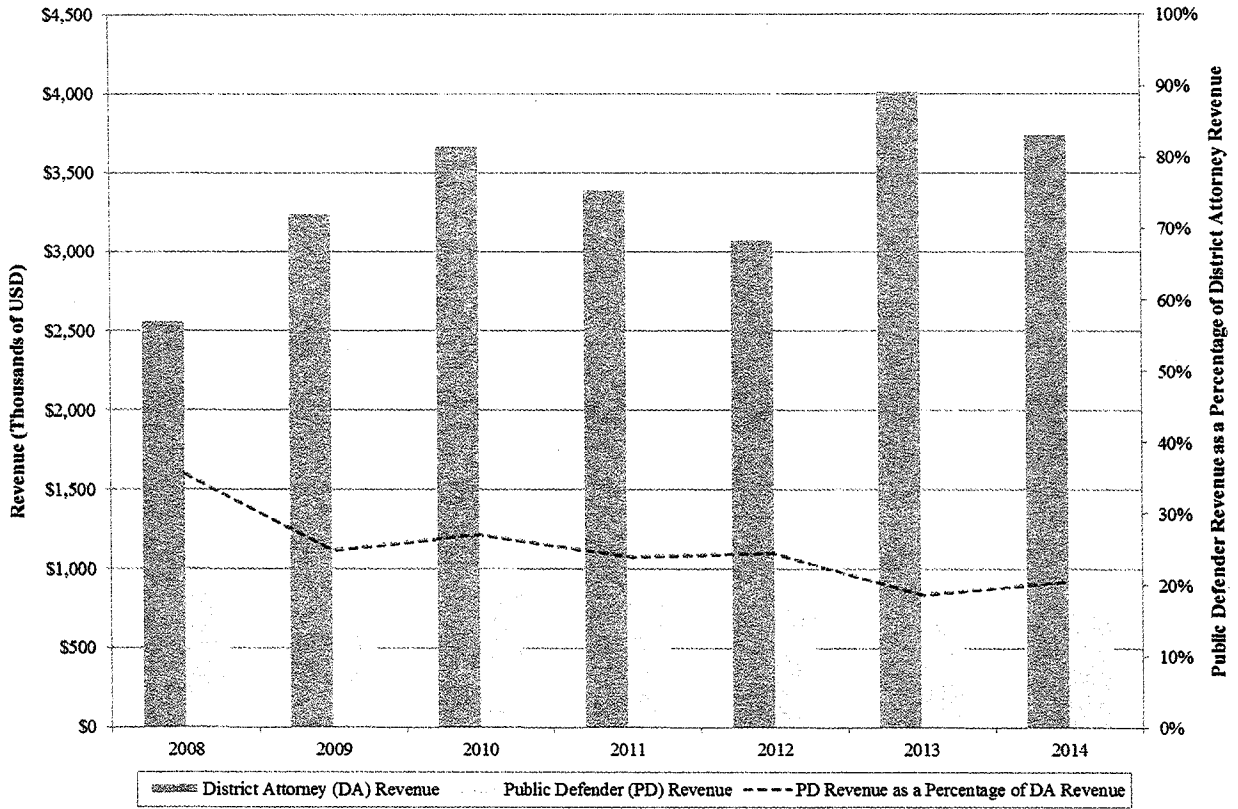
**Comparison of District Attorney and Public Defender Annual Revenue
Judicial District 2**



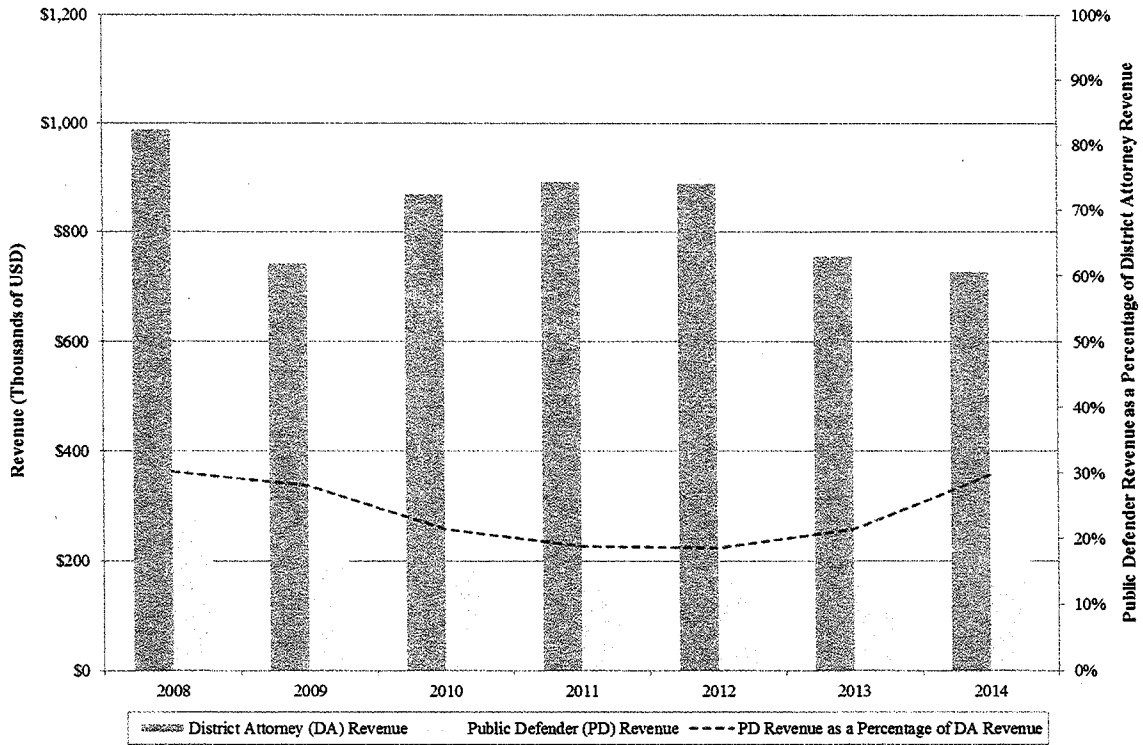
**Comparison of District Attorney and Public Defender Annual Revenue
Judicial District 17**



**Comparison of District Attorney and Public Defender Annual Revenue
Judicial District 18**



**Comparison of District Attorney and Public Defender Annual Revenue
Judicial District 20**



19. Unlike the public defenders, the budgets of district attorneys are not subject to discretionary appropriations by the Louisiana Legislature. Nor are they dependent on traffic tickets and court fees. Other stakeholders in the criminal justice

system cannot withhold funding from district attorneys. On the other hand, in many districts, district attorneys, sheriffs, and judges exercise significant influence over the budgets of district defenders. While some stakeholders diligently help the defenders generate revenue, others pursue policies that guarantee budget shortfalls. In recent years, writing fewer traffic tickets, reducing collections, utilizing pretrial diversion programs, redirecting and withholding funds, and lobbying against increases in the state appropriation are all steps that have been taken to divert money from public defenders.

20. The lack of resources available for attorneys, investigators, and other professionals in the public defense system in Louisiana irreparably harms and prejudices all members of the Class, but African Americans pay the heaviest price. They are incarcerated in Louisiana at a rate four times higher than those who are white. The percentage of African Americans in prison also far outstrips their representation in the general population: although African Americans make up only 32 percent of Louisiana's population, they represent nearly 70 percent of the State's prison population.

21. Studies have shown that African Americans are disproportionately entangled in the criminal justice system at every step in the process, beginning with disproportionate levels of police interaction and at all subsequent decision points, including arrest, bail, sentencing, and beyond. This is true even where other factors, such as the kind and number of charges, are the same as between blacks and whites. A study of inmates at Orleans Parish Prison in 2016 concluded that black men were 53% more likely than white men to stay in jail more than three days and made up 86% of people held in the jail for "over a year." The same study found that black men in New Orleans were 50 percent more likely than white men to be arrested and that black women were 55 percent more likely to be arrested than white women. (App. 83). Another study showed that disparities in arrests for marijuana-related offenses are even more pronounced. For example, between January 2010 through 2015, 85 percent of the people arrested for marijuana-related offenses in New Orleans were black. Of the group charged with felony marijuana arrests, 94 percent were black. The disproportionate arrest, detention,

conviction, and incarceration of African Americans in Louisiana is a bitter reminder of the history of racial discrimination embedded in its criminal statutes and procedures.

II. THE LOUISIANA PUBLIC DEFENSE SYSTEM FAILS TO PROVIDE EFFECTIVE REPRESENTATION TO THE POOR STATEWIDE.

22. The Louisiana Supreme Court has long held that effective representation of a criminal defendant requires a lawyer to communicate with the client about the objectives, strategies, and options available to the client, to conduct an investigation, pursue formal and informal discovery, research legal issues, file appropriate pretrial motions, and advocate and provide a voice for the client in court. The attorney also must possess the skill, training, and time needed to complete these tasks. In order to meet these obligations, public defenders need resources.

23. As part of its statutory mandate to provide effective legal services, LPDB has promulgated performance standards for public defenders and attorneys employed or working under contract for LPDB, including standards for trial attorneys providing legal services in non-capital cases. 22 Louisiana Administrative Code Ch. 7, Pt. XV; (Apps. 4, 6, 7). These standards are consistent with standards promulgated by the American Bar Association and the National Legal Aid and Defender Association. (Apps. 8 -15).

24. Among other things, LPDB trial court performance standards require that defenders meet with incarcerated defendants within 72 hours of appointment; conduct an initial interview with the client and attempt to secure the client's pretrial release; conduct a prompt investigation; secure the assistance of experts where necessary and appropriate; keep the client informed of the progress in the case; file appropriate pretrial motions; negotiate plea agreements; and fully explain the consequences of any such agreement to the client. While compliance with these standards would meet constitutional norms, the representation provided to Plaintiffs and other members of the Class falls woefully short.

25. As set forth below, Plaintiffs do not have attorneys who have investigated their cases, identified relevant evidence or witnesses, filed appropriate pretrial motions, or communicated with their clients in a meaningful or timely way. The prejudice and irreparable harm to Plaintiffs flowing directly from this lack of effective representation

includes, without limitation, losing the significant advantages at trial and in plea negotiations which arise from subjecting the prosecution's case to meaningful adversarial testing and the ability to make considered decisions about plea offers. The lack of effective assistance received by Plaintiffs and the nature of the injuries and prejudice each of them has suffered is typical of, and common to, the members of the Class.

A. Plaintiff Ashley Hurlburt (Winn Parish, 8th Judicial District)

26. Ms. Hurlburt has been held in Winnfield City Jail since her arrest on June 6, 2016. She and her husband are charged with negligent homicide of their one year-old child and face a maximum sentence of five years in prison. Since her arrest eight months ago, the court has appointed two different attorneys to represent her. The first attorney – a contract public defender in one court and part-time prosecutor in another court – filed a boilerplate motion to reduce bond, but never pursued the motion or spoke with Ms. Hurlburt about the motion. The court then removed the attorney from the case for an unknown conflict of interest. The second attorney appointed to represent Ms. Hurlburt has provided no legal services at all despite having been appointed to represent Ms. Hurlburt more than three months ago. Ms. Hurlburt has had no communications with the attorney whatsoever and has no way of contacting him. The court has set a hearing date for February 22, 2017 and trial for April 24, 2017. No investigation has taken place. No one has explained to Ms. Hurlburt the strength of the charges against her, possible defenses, or case strategy. She remains entirely in the dark about the proceedings and her future and has had to receive medical attention for pre-existing depression and anxiety disorders.

B. Plaintiff Steven Ayres (Winn Parish, 8th Judicial District)

27. Mr. Ayres is married to Ms. Hurlburt and charged with the same crime. In his eight months in prison, Mr. Ayres has had almost no contact with his attorney. The public defender has never interviewed Mr. Ayres about the facts of the case. At a preliminary examination hearing – a critical hearing in the criminal procedure process – the attorney did not explain the purpose or significance of the proceeding to Mr. Ayres; nor did he permit Mr. Ayres to participate in his own defense. Since the hearing, Mr.