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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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

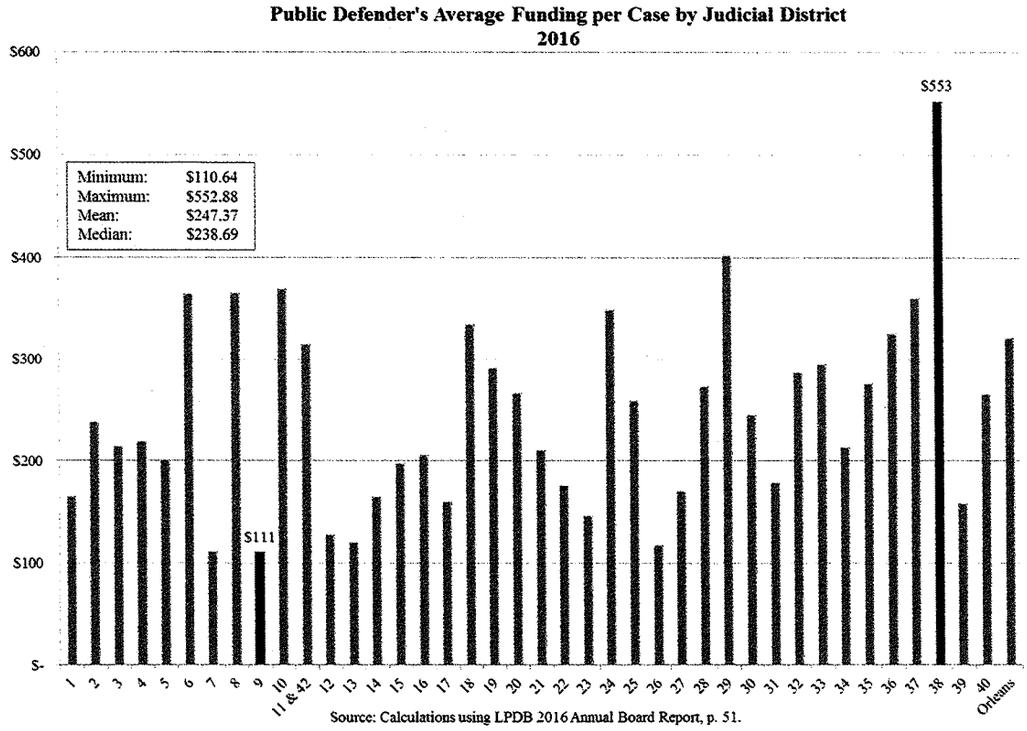
12. The Sixth and Fourteenth Amendments of the United States Constitution and Section 13 of the Louisiana Constitution of 1974 guarantee the right to meaningful and effective assistance of counsel to every person facing criminal charges punishable by imprisonment. Without access to the effective assistance 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.



Source: Calculations using LPDB 2016 Annual Board Report, p. 51.

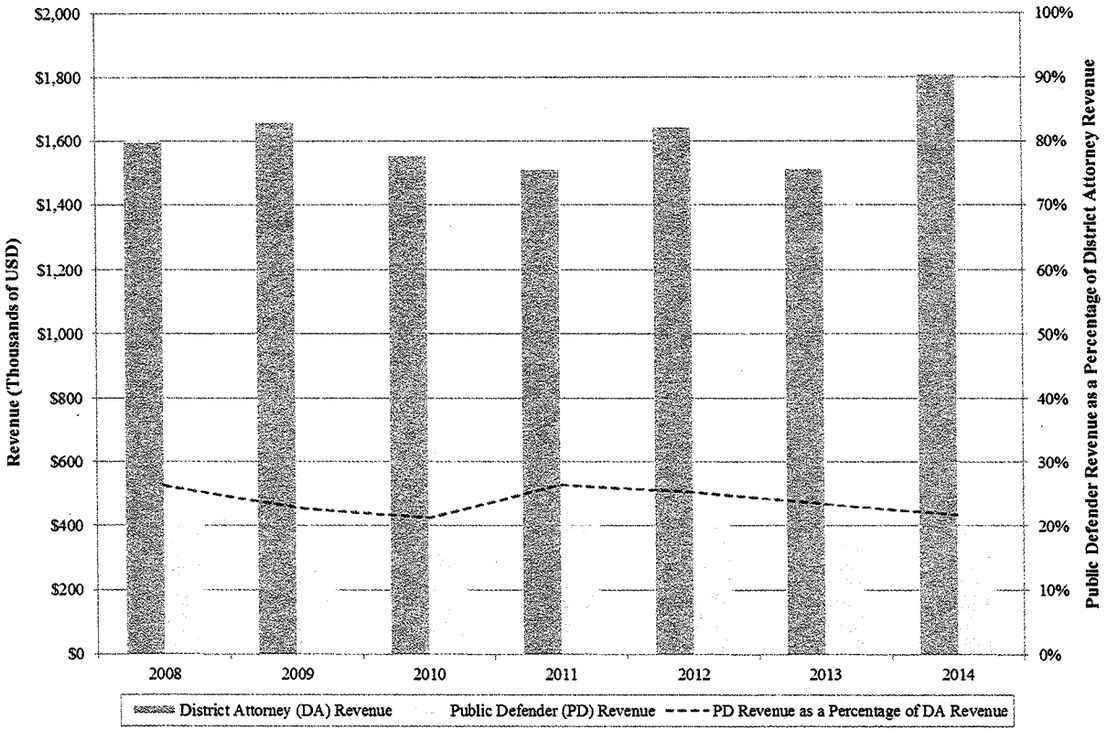
16. The insufficient funding for public defense can be traced to how the funding system is structured. The level of funding for each district office depends primarily on a user-pay system of local fines and fees and, as such, varies widely based on geography and the number of traffic tickets written 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.

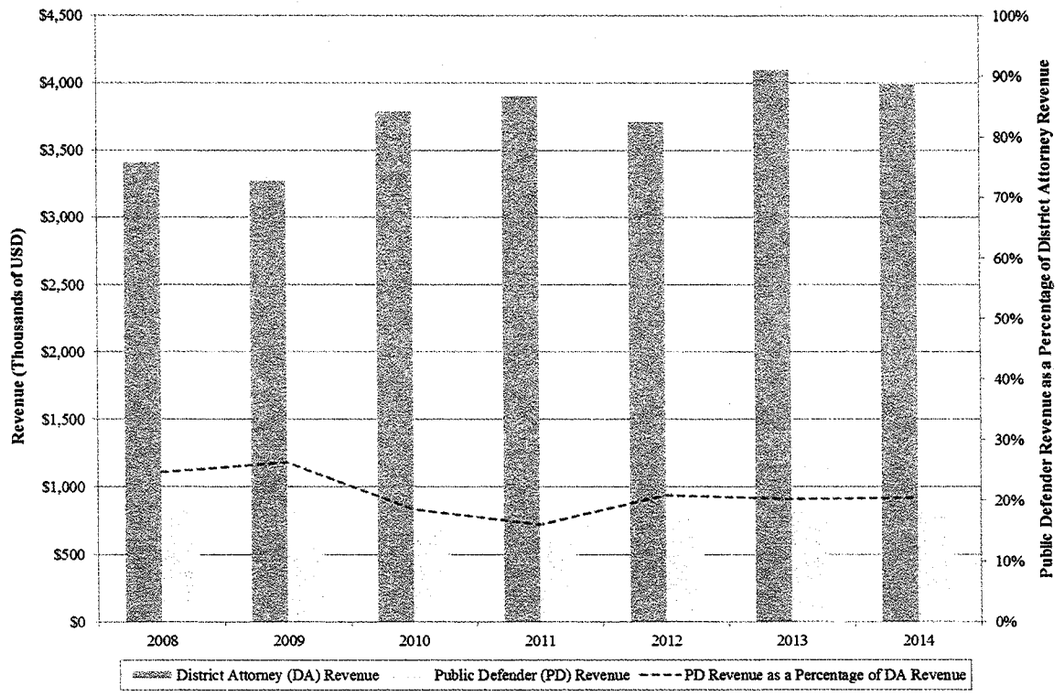
17. In stark contrast, district attorneys often receive more than twice – and sometimes three or four times – the funding for public defender services in the same district. In Orleans Parish, the District Attorney has historically had a budget more than twice the size of the Orleans Defenders. Meanwhile, 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.

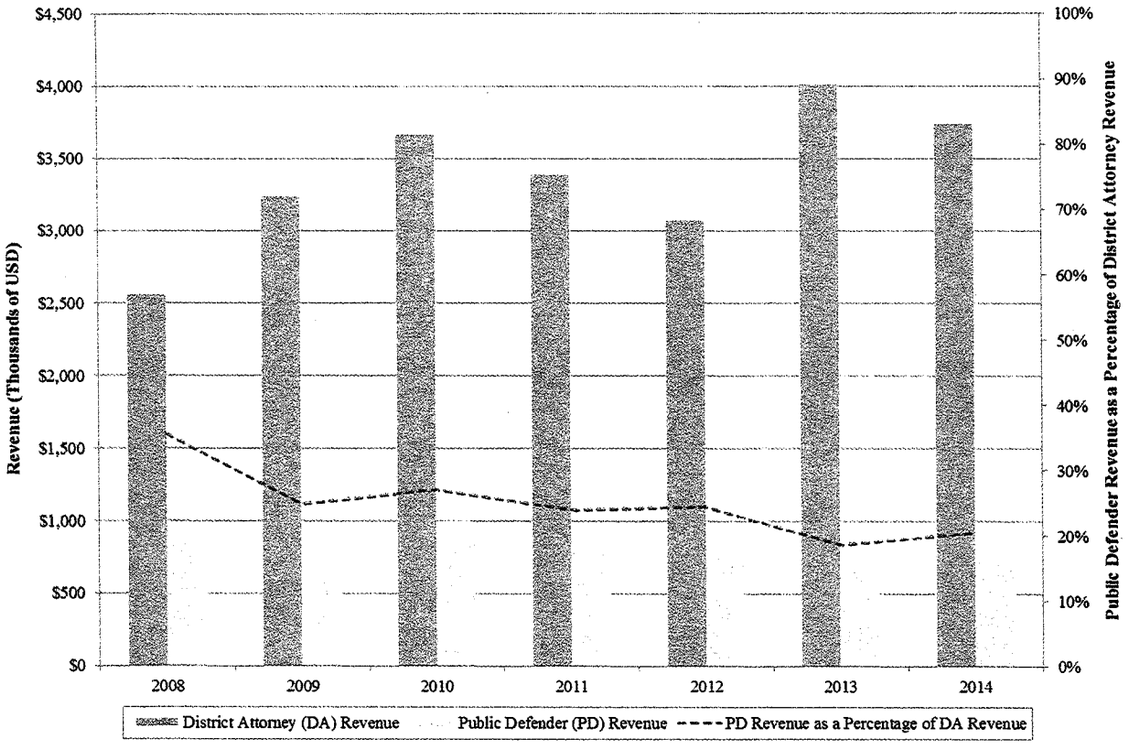
Comparison of District Attorney and Public Defender Annual Revenue
Judicial District 2



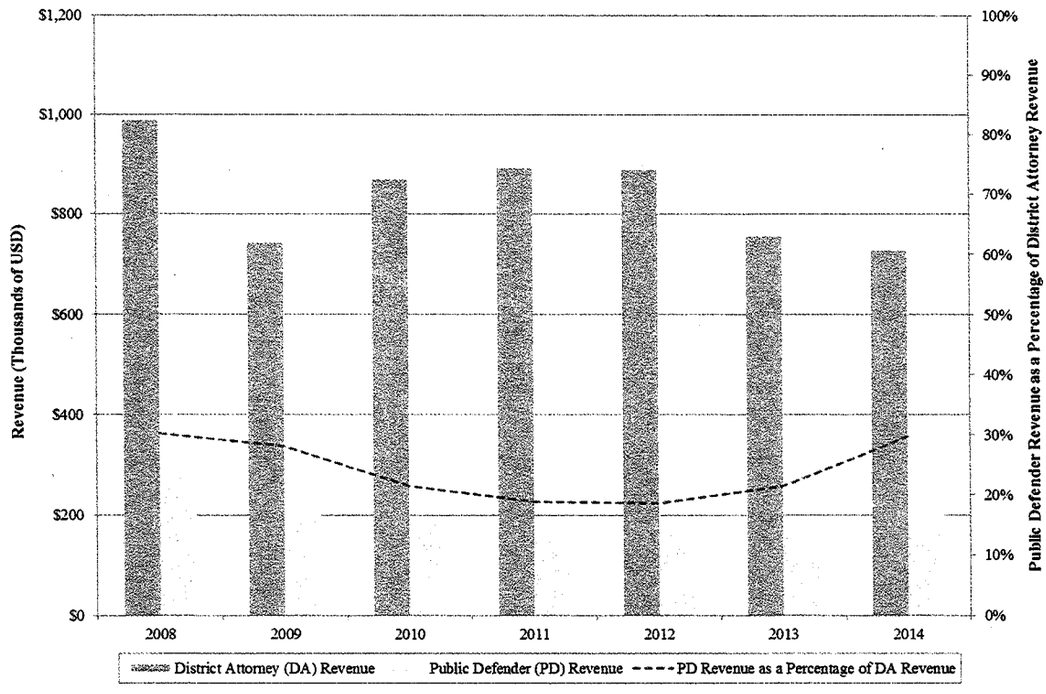
Comparison of District Attorney and Public Defender Annual Revenue
Judicial District 17



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.

Ayres has been unable to contact his lawyer. He has no means of communicating with his public defender by telephone and his letters to his attorney have gone unanswered. Mr. Ayres is scheduled to go to trial on April 24, 2017, but he has no information about whether his attorney has conducted an investigation of his case or identified witnesses or evidence. Despite having numerous questions, Mr. Ayres has not received any legal advice or information about the defenses available to him, potential trial strategies, or the strength of the charges against him.

C. Plaintiff Demarcus Morrow (Sabine Parish, 11th Judicial District)

28. Mr. Morrow has been in the Sabine Parish Jail since September 27, 2016 on charges of domestic abuse battery, simple criminal damage to property over $500, and several drug-related offenses. Mr. Morrow faces a minimum of two and a maximum of 30 years if convicted of the charges. Mr. Morrow saw his public defender for the first time at his arraignment on October 27, 2016, more than a month after his arrest. The public defender did not meet with Mr. Morrow before or after the arraignment, and Mr. Morrow returned to jail without any information on what to expect going forward. For several months following the arraignment, Mr. Morrow had no further contact with his attorney. The attorney did not file any substantive motions and failed to oppose or respond to substantive motions filed by the prosecution. As of the date of filing this petition, Mr. Morrow has spoken only once and only briefly with his public defender. He has never received a visit from his attorney at jail and he has not been able to participate in his defense. He has not received discovery disclosures from the State and has not been able to speak with his attorney about the attorney's investigation, if any, or strategy.

D. Plaintiff Keith Arcement (Lafourche Parish, 17th Judicial District)

29. Mr. Arcement has been held in the Lafourche Parish Jail and Concordia Parish Detention Center since August 12, 2016. He is charged with drug, firearm, battery, and damage to property offenses and faces a minimum of 10 years in prison if convicted. During his incarceration for the past five months, Mr. Arcement has been represented by a different attorney at each stage of the proceedings against him. None of the attorneys assigned to his case have had a meaningful discussion with Mr. Arcement about the

charges against him, possible defenses, case strategy, or the strength of the case against him. None have advocated on behalf of Mr. Arcement or protected his interests beyond making their appearances in court. No motions have been filed or other efforts undertaken to investigate the charges or secure witnesses and evidence.

30. On January 11, 2017, Mr. Arcement was brought to court for a pretrial conference. At the conference, the public defender represented Mr. Arcement and two of his co-defendants and informed Mr. Arcement that she had secured misdemeanor plea deals for her other clients. The attorney failed to disclose that her representation of the co-defendants created a conflict of interest and did not seek a waiver of the conflict or ask for another attorney to be appointed. Mr. Arcement is scheduled to go to trial on February 10, 2017 and has no assurance that the prosecutor's case will be tested meaningfully.

E. Plaintiff Frederick Bell (Lafourche Parish, 17th Judicial District)

31. Plaintiff Frederick Bell was arrested on October 5, 2016. He is charged with possession with intent to distribute cocaine, possession of marijuana, possession of drug paraphernalia and various traffic offenses. He faces a minimum of two and a maximum of 30 years in prison if convicted on the charges against him.

32. Mr. Bell first appeared in court on October 6, 2016 for his bond setting. He was not represented by an attorney. The court appointed the public defender to represent Mr. Bell and set his bail. That evening, a public defender spoke with Mr. Bell, but the conversation lasted less than five minutes. Mr. Bell does not know the name of the attorney and has had no further contact with him. A different public defender than the one he had met in jail represented Mr. Bell at the bond reduction hearing, but the attorney did not speak with him. Mr. Bell does not know the name of the second public defender, nor how to contact him, and has not seen him since the hearing.

33. Mr. Bell appeared for arraignment on November 3, 2016. A third public defender appeared on his behalf. The court set a pretrial conference for December 7, 2016. The public defender did not speak with Mr. Bell privately. Instead, she called out his name in open court, relayed the district attorney's plea offer, and asked Mr. Bell if he would accept it. Mr. Bell asked the public defender if he could see the discovery and

speak to her about the case. The public defender refused to provide copies of the disclosures from the State or speak with Mr. Bell any further about the plea offer. She instead ended the conversation. Mr. Bell turned down the plea offer.

34. Mr. Bell does not recall the name of the third public defender, does not know how to contact her, and has not seen her since the pretrial conference. He wrote her a letter which he asked the jail to send to the public defender's office asking for his discovery. He addressed it "to whom it may concern." He has not received a response.

35. No one is representing Mr. Bell as a practical matter. None of his three public defenders have filed pretrial motions on his behalf to test the strength of the prosecutor's case, spoken with Mr. Bell about the case in a meaningful way, or done anything more than present a take-it-or-leave-it plea offer to Mr. Bell.

F. Plaintiff Michael Carter (East Baton Rouge Parish, 19th JDC)

36. Mr. Carter has been in jail since August 2015. Charged with being a felon in possession of a firearm and indecent behavior with a juvenile, he faces a mandatory minimum sentence of imprisonment of 10 years and could be imprisoned for up to 20 years. Despite the seriousness of the charges against him, Mr. Carter did not have a public defender appointed to his case for nearly three months after his arrest and has had virtually no contact with the attorney since the appointment. The only time Mr. Carter sees his attorney is in court and then only in passing. The attorney has not explained his defense strategy to Mr. Carter, has not conducted any investigation of the allegations against him, and has made no effort to keep Mr. Carter informed about the case. In the 18 months that Mr. Carter has been waiting in pretrial detention, he has not been interviewed by his counsel and has not been provided with any information about the evidence or strength of the case against him. His attorney has filed only boilerplate pretrial motions. Mr. Carter has no business card or contact information for his lawyer.

37. Mr. Carter also has been denied any opportunity to participate in the defense of his case. Rather than pursue motion practice to test the charges against Mr. Carter, the public defender has repeatedly moved to continue all proceedings without asking whether Mr. Carter wanted to delay the case. Frustrated, Mr. Carter filed a pro se

motion for a speedy trial on December 14, 2016. At the next hearing date, neither the public defender nor the court asked Mr. Carter about the *pro se* motion. Instead, the public defender and prosecutor jointly requested and received another 60-day continuance. After obtaining the continuance, the public defender did not speak with Mr. Carter or explain what would happen on the next court date. Mr. Carter has no knowledge about where his case stands and no confidence that his attorney will advocate for him.

G. Plaintiff James Park (East Feliciana Parish, 20th Judicial District)

38. Plaintiff James Park has been in prison since August 2015 following his arrest for first degree rape. Over the past eighteen months, the public defender has done nothing to test the sufficiency of the charges against Mr. Park. The only motion filed by the public defender was a generic motion for discovery. Mr. Park also has met with his attorney only twice, once in September 2015 and once in January 2017. Both visits were perfunctory and lasted less than five minutes. His only other contact with his lawyer has been in court. On those occasions, his attorney did not discuss the charges against Mr. Park or what she was doing to defend him. The case against Mr. Park was originally set to go to trial on April 25, 2016, but has been continued and reset several times at the request of his lawyer. Although he is now scheduled to go to trial in April of this year, Mr. Park has never discussed the evidence against him with his attorney and does not believe that his public defender has done anything to prepare the case for trial.

H. Other Class Members

39. The lack of meaningful representation experienced by Plaintiffs is typical of non-capital criminal defendants with court-appointed lawyers, is an accepted practice in Louisiana, and causes irreparable harm and prejudice to each member of the Class. As the former Chief Public Defender in Plaquemines Parish, Matthew Robnett, articulated: "I can't say for sure, but I might be more shaded to settle because we can't mount a good defense. Part of your minimum right to counsel is more than just having a potted plant stand next to you in court. It's the ability to present an effective defense." (App. 59).

40. Consider this description of public defender services in Orleans Parish by OPD attorney Ting Peng: "Because we don't have enough lawyers on staff, the week I

passed the bar in 2013, I began representing people facing mandatory life sentences on felony charges. In Louisiana, people with as few as two prior nonviolent felony convictions can face mandatory life imprisonment on charges as minor as possession of a syringe containing heroin residue or, until recently, possession of a single joint. Defendants who cannot afford to make bond can sit in jail for 60 days while the district attorney decides whether to arraign them. An unconstitutionally high caseload means that I often see my new clients only once in those two months. It means that I miss filing important motions, that I am unable to properly prepare for every trial, that I have serious conversations about plea bargains with my clients in open court because I did not spend enough time conducting confidential visits with them in jail. I plead some of my clients to felony convictions on the day I meet them. If I don't follow up to make sure clients are released when they should be, they can sit in jail for unnecessary weeks and months." (App. 47).

41. The absence of traditional markers of effective representation, such as timely and meaningful adversarial testing of the prosecution's case, confidential consultation with clients, and appropriate investigation, are not unique to Orleans Parish. Due to a wide range of structural limitations, the public defenders in each of the forty-two judicial districts in Louisiana systematically fail to test the charges against their clients in a meaningful way. A law professor recently put it this way when discussing the restrictions on representation in Louisiana: "[This situation puts judges in an] wholly untenable position. They're asked to sit and guarantee fair and impartial trials in a situation where everybody knows there's nothing fair about it . . . ." (App. 51).

42. A public defender in Orleans Parish also recently stated in an affidavit that she counsels many clients to enter guilty pleas without investigating their cases, that she normally does not prepare for trial until the weekend before, does not review the police report until the day of trial, and generally does not visit crime scenes. (App. 57).

43. In some courts in Louisiana, the administration of justice involves having large groups of defendants enter their pleas in unison. During these mass pleas, a public defender hands out forms to the defendants in which they agree to plead guilty to a crime

with little to no understanding of the strength of the case against them, their possible defenses, or the collateral consequences of a conviction, including how the decision will impact their ability to access government services, travel, or remain in the country if they are not a United States citizen. The court reads the name, charge, and sentence of each defendant and questions them as a group to determine whether their pleas are knowing and voluntary. The defendants respond to the questions in unison. In most of these cases, the defendants have never met or spoken to the public defender prior to that day. Their decision is practical: plead "guilty" and secure their release from prison or a shorter prison term or enter a plea of "not guilty" and wait in prison for a trial date that may be months away with a public defender who will put up little resistance to the State's case.

44. Timely investigation is also a constitutionally mandated part of a criminal defense engagement that is missing in Louisiana. Most district offices do not employ investigators, social workers, or other professional staff needed to provide effective assistance. Those who do employ investigators are understaffed. For example, in 2015, the District Defender for the 16th Judicial District handled 2359 felony cases, but had no investigator on staff and no line item expense allocation to engage an investigator. (App. 2). In 2016, this same district had a single investigator for a similar number of cases.

45. A lack of investigative support renders an attorney ineffective. Colorado, Connecticut, New Hampshire, New Jersey, Vermont, and Washington State maintain or prescribe ratios of at least one investigator for every four attorneys: Indiana requires indigent defense providers to fill three support staff positions for every four staff attorneys, at least one of whom should be an investigator; Delaware, Iowa, Minnesota, Rhode Island, Virginia, and Washington D.C. maintain or prescribe a ratio of at least one investigator for every six attorneys; and Kentucky, Massachusetts, Montana, and Wisconsin maintain or prescribe a ratio of better than one investigator for every eight attorneys. The National Study Commission on Defense Services Guideline 4.1 recommends one investigator for every three attorneys. Few, if any, district offices for public defender services in Louisiana come close to meeting national norms, and none of them meet national norms if the ratios are adjusted to account for excessive caseloads.

46. Public defenders also lack support from social workers and mental health professionals. It is now widely recognized that a significant number of the people charged with crimes suffer from mental health and substance abuse problems. In order to communicate with and advocate effectively on behalf of their clients, public defenders may require assistance from trained professionals. (App. 70). For example, client and family interviews conducted by an experienced social worker can, among other things, identify mental health issues and substance-abuse problems. Information gleaned from such interviews is often not only essential for a defender to be able to meaningfully communicate with a client, but also can raise new defenses and trial strategies and help shape arguments during plea bargains, bond hearings, and sentencing hearings. Social workers and other professionals play a pivotal role in effective advocacy and, while widely available in many other states, they are largely unheard of in Louisiana.

III. THE POOR IN LOUISIANA WILL CONTINUE TO BE DENIED THE RIGHT TO COUNSEL UNTIL THE STRUCTURAL LIMITATIONS OF THE PUBLIC DEFENDER SYSTEM ARE REMOVED.

47. Structural limitations in the public defender system, including the acute lack of resources, endemic conflicts of interest, lack of independence, unreasonably high workloads and lack of supervision create an impenetrable barrier to effective representation. Although Louisiana's public defense system has never been capable of providing counsel state wide to indigent defendants in the way contemplated in *Gideon*, in the past year, the system's failures have come into sharper focus as thousands of appointments have been delayed in judicial district courts throughout Louisiana.

48. In some districts, judges responded by appointing civil attorneys with no prior criminal law experience to represent those on waiting lists. This is akin to appointing an anesthesiologist to perform surgery: both are doctors, but they do not share the same set of skills, and the client is highly likely to suffer as a result.

49. Courts in other judicial districts had city attorneys and prosecutors stand in as counsel even though they had clear conflicts of interest. In some cases, judges advised defendants to plead guilty rather than wait for an attorney-in-name only. Other courts, in contrast, stopped appointing attorneys altogether for poor people charged with low grade

offenses or for appearances at bail hearings, arraignments, and revocations of probation. Overworked and stretched too thin, public defenders in these districts are reluctant to object to these practices since any complaint could bring the system to a halt.

A. Excessive Caseloads and Critical Understaffing

50. Caseload data published by LPDB understates the problem. Lack of resources has caused LPDB to adopt maximum caseload standards that are significantly higher than those that have come to be accepted nationally and adopted in many other states. Were they followed, the caseload standards for felonies in Louisiana would limit the number of felonies that a public defender should handle at any given time to 200. LPDB caseloads also do not take into account cases for which counsel was not appointed but should have been. However, even if LPDB caseload information were accurate, it is simply impossible for an attorney assigned twice or five times the recommended caseload to do what the federal and state constitutions and the Louisiana Supreme Court require.

51. An attorney assigned 400 felonies (twice the LPDB standard), for example, has less than a day – even if she worked every calendar day of the year – to meet and consult with each client, examine the client's case file, interview witnesses, track down evidence, prepare defenses and motion papers, consider a plea, prepare for trial, and dispose of the case. When public defenders are assigned too many cases, client communications, case investigation, and case preparation become perfunctory, often unperformed, exercises that are inconsistent with practice standards and ethical rules. In most districts, public defenders rarely meet with clients, particularly those who are incarcerated, outside of court. No investigation for, or examination of, witnesses or search for relevant evidence is undertaken. Very often the attorneys does not engage in conversation with the defendant at all. Public defenders in many districts are so overwhelmed by their caseloads that some just sit at counsel table in the courtroom reading files while clients appear before the court and enter uncounseled pleas.

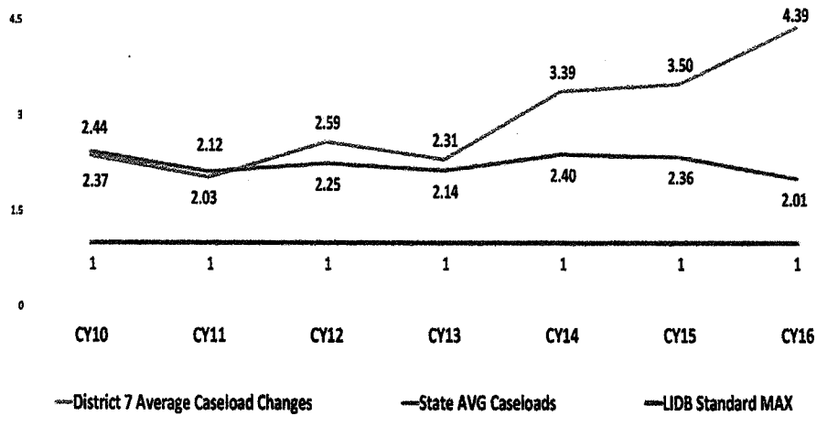
52. Nearly all district defender offices annually exceed LPDB caseload standards. In each of the past six years the State's overall average caseloads per attorney – as measured by LPDB – has been *more than twice* and up to *five times* the Board's

already inflated caseloads. Using caseload information from the 2016 LPDB Annual Report (App. 3), the following two graphics illustrate the extent to which defender caseloads in the 7th and 17th Judicial Districts exceed LPDB standards. Exhibit 1 to the Appendix compiles graphics for each of the forty two judicial districts.

7th JUDICIAL DISTRICT
District 7 PDO Average Caseload per Atty FTE

2016 LPDB Report at p.166

The LPDB standard maximum for caseload is significantly in excess of national norms and caseload maximums in other states.

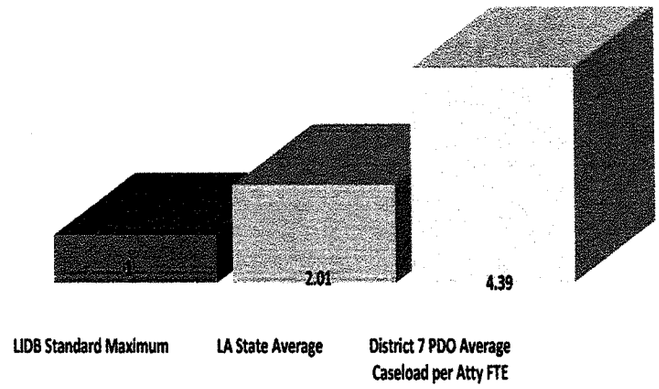


In the 7th Judicial District, public defense attorneys maintain caseloads almost four and a half times the recommended caseload limit for each attorney.

The 7th Judicial District is a rural district that handles only a small number of cases each year, making comparisons difficult. However, reliance on insufficient revenues has resulted in caseloads that by far exceed established caseload limits. Excessive cases limit each defender's ability to provide effective assistance of counsel to their clients.

District 7 PDO Average Caseloads Compared to State Average & State Standard Maximums

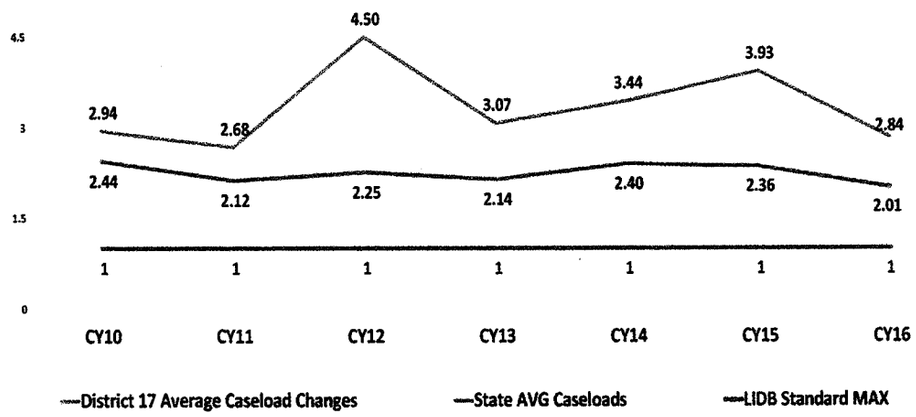
2016 LPDB Report at p.166



17th JUDICIAL DISTRICT
District 17 PDO Average Caseload per Atty FTE

2016 LPDB Report at p.344

The LPDB standard maximum for caseload is significantly in excess of national norms and caseload maximums in other states.

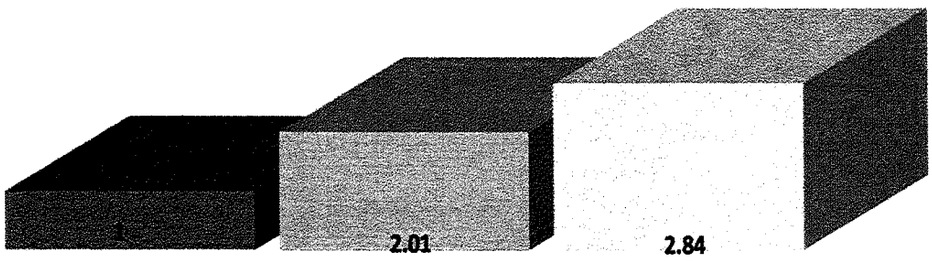


In the 17th Judicial District, public defense attorneys maintain caseloads almost three times the recommended caseload limit for each attorney.

Reliance on insufficient revenues has resulted in caseloads that by far exceed established caseload limits. Excessive cases limit each defender's ability to provide effective assistance of counsel to their clients.

District 17 PDO Average Caseloads Compared to State Average & State Standard Maximums

2016 LPDB Report at p.344



LIDB Standard Maximum | LA State Average | District 17 PDO Average Caseload per Atty FTE

B. Failure to Train and Supervise

53. The Louisiana Public Defender Act contemplates "statewide oversight" of the attorneys representing indigent defendants and "uniform binding standards and guidelines for the delivery of public defender services and for an effective management system to ensure compliance with such standards and guidelines." LA-R.S. 15:142.

54. The statute further requires LPDB to employ a trial-level compliance officer who is statutorily mandated to engage in "regular assessments and ongoing monitoring of each district public defender system's compliance" with board performance standards and "to make regular reports to the board on variances to board standards and guidelines with respect to each district." LA-R.S. 15:157.

55. For several years following the passage of the Louisiana Public Defender Act in 2007, LPDB provided some training and did what it could with limited resources to supervise the district offices. It also directed district offices to supervise their attorneys as part of their contracts with LPDB. However, throughout this period, some district defenders viewed the LPDB's imposition of performance standards as an unwelcome intrusion on their authority and engaged in a coordinated campaign to undermine the staff's regulatory authority by complaining about the size of its professional staff and state-wide programs dedicated to capital defense, criminal appeals, and wrongful conviction claims. In an email exchange with an LPDB board member, the district defender in the 15th Judicial District Court admitted that he employed a tactic of exaggerating the size of his wait list by over 3000 cases to support his argument that state-wide programs were being funded at the expense of his district. (App. 95).

56. In 2016, with the support of Governor Edwards and the district attorneys, district defenders who wanted to insulate themselves against LPDB oversight successfully lobbied the Louisiana Legislature to amend the Louisiana Public Defender Act. The final version of the amendment – Act 571 – gave district defenders the right to nominate a majority of the seats on LPDB and eliminated the role of local law schools, the Louisiana State Bar Association, and other stakeholders in the nomination and appointment of board members. Act 571 also shifted additional funding to the districts at

the expense of key statewide programs, including capital representation and the statewide training program. Act 571 did not increase funding for indigent defense or modify the system's reliance on fines and fees to fund most indigent defense services.

57. In a note to other board members, Defendant Pat Fanning explained the selection process for reconstituting LPDB under Act 571 and the concerns of some district defenders as follows: "The five reps, including myself, who came from the five Circuits were named basically by the district defenders. Obviously, there was discussion with the District Defenders before the nominations were made and the new board members heard complaints about money, accountability, etc. The guys in the districts think of themselves as the foot soldiers and complain that the administration takes as much money as it wants and the districts get whatever is left to do the actual work of providing services to the clients in the courtrooms. They complain that they are held accountable for how they spend every dollar but the 501 c 3s do not have to do the same and some end up with surpluses while some districts go into ROS." (App. 95).

58. On October 17, 2016, an anonymous group of district defenders sent a "white paper" to the recently reconstituted LPDB. In this communication, the anonymous district defenders complained bitterly about funds allocated to the Innocence Project and other state-wide programs. Notwithstanding the statutory mandate of LPDB to use performance standards to assure high-quality legal services throughout the State, the anonymous district defenders further argued that "the staff has focused on regulation and management of the districts," that such supervision is unnecessary and unwarranted, and that the staff budget for LPDB should be significantly reduced. (App. 69).

59. LPDB and its staff have bowed to this pressure by abandoning their supervisory and oversight functions. Among other things, LPDB and its staff have ceased all efforts to assess or monitor compliance with state-wide performance standards by the district offices, publish reports regularly showing variances between the board standards and guidelines and the conduct of each district office, enforce the contractual obligation of the District Offices to supervise and train their attorneys, or fill crucial staff positions contemplated by the Public Defender Act such as a state-wide training director.

The result has been to set the public defense system back a decade and puts years of financial investment at risk by rendering state-wide standards and training illusory.

C. Lack of Independence and Conflicts of Interest

60. Although the Louisiana Legislature intended the Louisiana Public Defender Act to establish a public defender system that is "free from undue political and judicial interference and free of conflicts of interest," what exists in reality is a system where conflicts of interest are commonplace and an accepted part of the practice of law when it comes to the representation of poor people in the criminal defense system.

61. All district defenders rely heavily on locally generated funds from traffic tickets and court fees for their budgets. This funding structure places sheriffs, prosecutors, and other stakeholders in a position to manipulate the budgets for public defenders. Public defenders who maintain good relationships with local officials may benefit from high rates of traffic tickets, fewer of their cases being referred to a pretrial diversion program, or periodic allocations from a local jury fund controlled by the prosecutors and judges. Public defenders who upset the balance of power by arguing too forcefully for their clients may not fare as well. In addition to encouraging public defenders to go along to get along, the current funding structure rewards district defenders who are bad at their jobs. Because a percentage of the fees assessed on defendants who are convicted of a crime are allocated to the budget of a local district defender, district defenders who lose more cases do better financially than those who win. The State Public Defender put it succinctly: "Our revenue is partially dependent on our losing." (App. 55).

62. Excessive caseloads and lack of resources likewise prevent public defenders from meeting their ethical obligations under state law to provide competent and diligent representation under Rules 1.1 and 1.3 of the Rules of Professional Conduct and to fail in their obligations under Rule 1.4 to keep clients reasonably informed and provide them with sufficient information to participate intelligently in decisions concerning their defense. Time deficits associated with excessive caseloads also create inherent conflicts

under Rule 1.7 because every time an overworked public defender allocates time to one client he is acting to the prejudice of other clients whose cases also need attention.

63. The continued use of flat-fee contracts for public defenders in most districts in Louisiana raises serious conflict issues as well. Flat-fee contracts entice contract defenders to assume large caseloads, but offer no financial incentive to invest time or resources in the cases. Compounding the conflict is the fact that these contracts permit the attorneys to simultaneously maintain a private practice. Washington State banned flat-fee contracts in 2009 because they create an "inherent conflict of interest" between a client's right to adequate counsel and the attorney's personal financial interest. (App. 32). When salaried lawyers are free to represent private clients, they have a financial incentive to devote more time to those clients than to their indigent clients. In practice, the public defense contracts are largely unsupervised, and the arrangement commonly results in contract lawyers underserving their indigent clients.

IV. THE STRUCTURAL IMPEDIMENTS TO THE RIGHT TO COUNSEL CANNOT BE DISMANTLED WITHOUT JUDICIAL INTERVENTION.

64. The crisis in the Louisiana indigent defense system is not new; it is chronic and systemic, part of a pattern of fits and starts at reform dating back to 1966. As set forth in the attached presentation authored by State Public Defender Jay Dixon, the vast majority of public defender offices in Louisiana are in a perpetual state of financial crisis "due to their reliance on inadequate, unstable, and unreliable funding streams primarily based on traffic tickets and court costs." (App. 98).

65. Only months ago, at the urging of many district defenders and prosecutors, the Louisiana Legislature statutorily mandated that LPDB borrow from Peter to pay Paul by reducing funding for several non-governmental nonprofit law firms which provide services in the areas of capital trials and appeals, non-capital criminal appeals, juvenile justice, and post-conviction applications, and reallocating those funds to the districts. While this reallocation offered limited and temporary financial relief for a few districts, public defender services in all judicial districts remain underfunded.

66. The only way to remedy the systemic barriers that affect indigent defendants in Louisiana is through structural reform. Such reform must include substantial – and adequate – increases in the funding available for indigent defense and monitored assurance of appropriate performance by appointed counsel. While the courts lack authority to direct the Louisiana Legislature to allocate funds to indigent defense, they can remedy the denial of the fundamental right to counsel by ordering Defendants to comply with their constitutional and statutory mandate and appointing a monitor to ensure enforcement of constitutional and ethical standards applicable to public defenders.

67. Appointing a monitor empowered to supervise the indigent defense system, is necessary to redress the harms that Plaintiffs and other members of the Class are suffering and would otherwise continue to suffer as a result of the ongoing systemic inadequacy of the State's system. Those affected by the failure of this system are, almost by definition, among the most politically vulnerable and least powerful persons in the state. In contrast, the opposition to reform is organized, powerful, and vocal. While many district defenders, prosecutors, and judges support reform, other stakeholders actively work against it. District defenders who oppose reform jealously rail against money allocated to state-wide programs for capital cases and innocence claims. They complain about losing autonomy and submitting to oversight and supervision by the Board. Only a court-appointed monitor will have the necessary independence to confront opposition from stakeholders with a vested interest in maintaining the state quo.

CLASS ACTION ALLEGATIONS

68. Plaintiffs bring this suit on behalf of themselves and as a class action under Louisiana Code of Civil Procedure Article 591 on behalf of all members of the following class: "All persons who are indigent and facing charges in Louisiana of a non-capital criminal offense punishable by imprisonment." Excluded from this Class are criminal defendants represented by private counsel, criminal defendants who are voluntarily and knowingly representing themselves *pro se*, and juveniles charged with criminal offenses but whose cases are assigned only to juvenile court.

69. The exact number of the members of the Class is unknown, but is reasonably estimated to be well in excess of 20,000 at any given time in that many of the 42 district offices handle several thousand indigent cases per year. The large number of class members makes individual joinder of all members impracticable.

70. Questions of fact common to the Class include, but are not limited to: (1) whether, on a system-wide basis, the traditional markers of effective representation such as timely and meaningful adversarial testing of the prosecution's case, confidential consultation with clients, and appropriate investigation are absent or significantly compromised; (2) whether substantial structural limitations, including severe lack of resources, unreasonably high workloads, conflicts of interest, and critical understaffing, systematically deny members of the Class access to counsel; (3) whether Defendants 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; and (4) whether the members of the Class suffer prejudice and irreparable harm as a result of the failure of Defendants to provide effective assistance of counsel; (5) whether the members of the Class are treated "equal under the law"; and (6) whether public defenders are meeting their obligations under the Rules of Professional Conduct 1.1, 1.3, 1.4, and 1.7 in providing legal services to the Class.

71. Questions of law common to the Class include, but are not limited to: (1) whether system-wide structural defects in the State's public defender system, such as inadequate funding and performance monitoring, create a constitutionally intolerable risk that members of the Class will be denied the meaningful assistance of counsel and equal protection in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2 and 13 of the Louisiana Constitution; (2) whether the system-wide absence of traditional markers of effective representation warrants the court exercising its constitutional and inherent power and supervisory jurisdiction to ensure that indigent defendants receive reasonably effective assistance of counsel through imposition of a state-wide remedy; (3) whether substantial structural limitations present in the public defense system in Louisiana warrant the court exercising its constitutional

and inherent power and supervisory jurisdiction to ensure that indigent defendants receive reasonably effective assistance of counsel and warrant the imposition of a state wide remedy; (4) whether systematic violations of the Louisiana Supreme Court Rules of Professional Conduct by public defender warrant the court exercising its constitutional and inherent power and supervisory jurisdiction to impose a state-wide remedy; and (5) whether members of the Class are entitled to declaratory and/or injunctive relief.

72. The claims asserted by Plaintiffs are typical of the Class because each concerns the systemic failure of the public defender system in Louisiana and its inability to provide meaningful access to counsel and whether these system-wide structural limitations present an immediate, serious and irreparable threat that Plaintiffs and the class members will either actually or constructively be denied the effective representation to which they are entitled under the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 2 and 13 of the Louisiana Constitution.

73. Plaintiffs' interests are aligned with the interests of other members of the Class because the constitutional and statutory deprivations caused by Defendants threaten Plaintiffs in the same way they threaten the entire Class.

74. Plaintiffs are represented by counsel with experience and competency in the litigation of complex class actions and public interest lawsuits. Plaintiffs, therefore, will be able to fairly and adequately represent and protect the interests of the Class.

75. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications and could establish incompatible standards of conduct for the parties opposing the class.

76. Plaintiffs seek the same declaratory and injunctive relief for the Class as a whole because Defendants have consistently failed to act pursuant to a regulatory scheme that is common to Plaintiffs and their conduct affects all Class members similarly.

77. This case involves important issues of constitutional rights to counsel and due process under the United States and Louisiana Constitutions. These issues cannot be addressed as a practical matter by each member of the class, and any questions of law and fact common to the members of the Class predominate over any questions affecting

individual class members. Class treatment also will permit thousands of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense entailed by individual suits. Members of the class will be readily ascertainable from the records of the courts and Defendants, and no other difficulties are likely to be encountered in the management of this case that would preclude its maintenance as a class action. A class action is, therefore, the superior method for the fair and efficient adjudication of this case.

COUNT ONE

SECTION 1983 CLAIM FOR INJUNCTIVE AND DECLARATORY RELIEF FOR VIOLATIONS OF THE RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION.

78. Plaintiffs and the Class do not stand "equal before the law." They are poor, facing charges punishable by imprisonment in Louisiana, and have been affirmatively or constructively denied effective legal representation and will continue to be denied meaningful representation unless this Court intercedes on their behalf.

79. The traditional markers of effective representation, such as meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation, are either absent from the delivery of public defender services in Louisiana or significantly compromised system wide due to structural barriers to effective representation, including, without limitation, severe lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing. So long as these structural defects exist, the poor in Louisiana will suffer a constitutionally intolerable risk that they will be denied meaningful and effective assistance of counsel.

80. Defendants are the state officials statutorily responsible for maintaining and administering a system for delivery of effective legal services for the poor. Despite this duty and the constitutional imperative it represents, Defendants have long failed to remedy the deeply entrenched structural defects that deprive the Class of their right to

counsel and thereby have failed to establish a public defense system in Louisiana which provides effective client representation statewide.

81. As a direct and proximate result of the conduct of the Defendants which was undertaken in their official capacities and under color of state law, Plaintiffs and the Class have been, and will continue to be, denied due process and their right to counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

82. Plaintiffs are entitled to and request that the Court enter an order granting preliminary and permanent injunctive relief prohibiting Defendants from failing to: (1) provide effective representation for the poor when they are facing charges with criminal offenses punishable by imprisonment, including, without limitation, meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation; (2) remove the structural barriers to effective representation in Louisiana including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing; and (3) enforce mandatory statewide standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state.

83. Plaintiffs are further entitled to and request an order appointing a monitor to supervise compliance with the injunctions and orders of this Court until such time as the Court determines that Defendants: (1) implemented a state-wide public defense system that will continue to provide effective representation for the poor when they are charged with criminal offenses punishable by imprisonment, including, without limitation, meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation; (2) removed the structural barriers to effective representation including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing; and (3) implemented and enforce mandatory statewide standards and guidelines that require

public defender services to be provided in a manner that is uniformly fair and consistent throughout the State.

84. Plaintiffs are further entitled to and request an order declaring pursuant to La. Code of Civil Procedure art. 1871 that (1) the traditional markers of effective representation, such as meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation, are either absent from the delivery of public defender services in Louisiana or significantly compromised on a system wide basis; (2) judicial intervention is needed to remove the structural barriers to effective representation including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing.

85. Plaintiffs are further entitled to and request an award of reasonable attorneys' fees and costs; and such other relief it deems just and proper.

COUNT TWO

SECTION 1983 CLAIM FOR INJUNCTIVE AND DECLARATORY RELIEF FOR VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION.

86. The poor in Louisiana, including Plaintiffs and other members of the Class, do not have access to the effective assistance of counsel in non-capital criminal cases. The lack of access to counsel for the poor is both actual and constructive. Even when an attorney is appointed to represent the poor, the appointment is untimely and the services provided inadequate because they fail to meet the minimum constitutional standards of effective representation, and do not comply with the ethical obligations of attorneys under Rules 1.1, 1.3, 1.4, or 1.7 of the Louisiana Rules of Professional Conduct. These substandard and constitutionally deficient public defender legal services are, nevertheless, an accepted standard of practice in each of the 42 Judicial Districts in Louisiana and arise from state-wide structural barriers to effective representation, including, without limitation, severe lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical

understaffing. As such, compared to criminal defendants with the financial resources to hire effective counsel, Plaintiffs and the Class do not stand "equal before the law."

87. As a direct and proximate result of the conduct of the Defendants which was undertaken in their official capacities and under color of state law, Plaintiffs and the Class have been, and will continue to be, denied equal protection in violation of the Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

88. Plaintiffs are entitled to and request that the Court enter an order granting preliminary and permanent injunctive relief prohibiting Defendants from failing to: (1) provide effective representation for the poor when they are facing charges with criminal offenses punishable by imprisonment, including, without limitation, meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation; (2) remove the structural barriers to effective representation in Louisiana including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing; and (3) enforce mandatory statewide standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state.

89. Plaintiffs are further entitled to and request an order appointing a monitor to supervise compliance with the injunctions and orders of this Court until such time as the Court determines that Defendants have: (1) implemented a state-wide public defense system that will continue to provide effective representation for the poor when they are charged with criminal offenses punishable by imprisonment, including, without limitation, meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation; (2) removed the structural barriers to effective representation including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing; and (3) implemented and enforce mandatory statewide standards and guidelines that require

public defender services to be provided in a manner that is uniformly fair and consistent throughout the State.

90. Plaintiffs are further entitled to and request an order declaring pursuant to La. Code of Civil Procedure art. 1871 that (1) the traditional markers of effective representation, such as meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation, are either absent from the delivery of public defender services in Louisiana or significantly compromised on a system wide basis; (2) judicial intervention is needed to remove the structural barriers to effective representation including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing.

91. Plaintiffs are further entitled to and request an award of reasonable attorneys' fees and costs; and such other relief it deems just and proper.

COUNT THREE

CLAIM FOR INJUNCTIVE AND DECLARATORY RELIEF FOR VIOLATIONS OF THE LOUISIANA CONSTITUTION

92. Plaintiffs and the Class reallege and incorporate by reference each of the preceding allegations. As a direct and proximate result of the conduct of the Defendants which was undertaken in their official capacities and under color of state law, Plaintiffs and the Class have been denied and will continue to be denied due process and their right to counsel in violation of La. Const. art. 1 §§ 2, 3 & 13.

93. Plaintiffs are entitled to and request that the Court enter an order granting preliminary and permanent injunctive relief prohibiting Defendants from failing to: (1) provide effective representation for the poor when they are charged with criminal offenses punishable by imprisonment, including, without limitation, meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation; (2) remove the structural barriers to effective representation in Louisiana including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of

supervision, lack of independence, and critical understaffing; and (3) enforce mandatory state-wide standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the State.

94. Plaintiffs are further entitled to, and request, an order appointing a monitor to supervise compliance with the injunctions and orders of this Court until such time as the Court determines that Defendants have: (1) implemented a state-wide system that provides effective representation for the poor when they are charged with criminal offenses punishable by imprisonment, including, without limitation, meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation; (2) removed the structural barriers to effective representation in Louisiana including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing; and (3) implemented and enforce mandatory state-wide standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state.

95. Plaintiffs are further entitled to, and request. an order declaring pursuant to La. Code of Civil Procedure art. 1871 that: (1) the traditional markers of effective representation, such as meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation, are either absent from the delivery of public defender services in Louisiana or significantly compromised on a system wide basis; (2) judicial intervention is needed to remove the structural barriers to effective representation in Louisiana including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing.

96. Plaintiffs are further entitled to and request an award of reasonable attorneys' fees and costs; and such other relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class, respectfully request that the Court enter an order providing for the following relief:

97. Certification of this case as a class action on behalf of the Class defined in Paragraph 79 above, appoint Plaintiffs as Class Representative, and appoint their counsel of record as listed below as counsel for the Class;

98. An injunction prohibiting Defendants from failing to: (1) provide effective representation for the poor when they are facing charges with criminal offenses punishable by imprisonment, including, without limitation, meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation; (2) remove the structural barriers to effective representation in Louisiana including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing; and (3) enforce mandatory statewide standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state;

99. An order of appointment for a monitor to supervise compliance with the injunctions and orders of this Court until such time as the Court determines that Defendants have: (1) implemented a state-wide public defense system that will continue to provide effective representation for the poor when they are charged with criminal offenses punishable by imprisonment; (2) removed the structural barriers to effective representation including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing; and (3) implemented and enforce mandatory statewide standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the State;

100. A declaration that (1) the traditional markers of effective representation, such as meaningful adversarial testing of the charges, the pressing of necessary motions, timely and confidential consultation with clients, and appropriate case investigation, are

either absent from the delivery of public defender services in Louisiana or significantly compromised on a system wide basis; (2) judicial intervention is needed to remove the structural barriers to effective representation in Louisiana including, without limitation, lack of resources, unreasonably high attorney workloads, conflicts of interest, lack of supervision, lack of independence, and critical understaffing;

101. An award of reasonable attorneys' fees and costs; and

102. Such other relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing First Amended Verified Petition for Class Certification and Declaratory and Injunctive Relief, dated September 18, 2017, was sent this day via First Class Mail, properly addressed and postage paid, to the parties listed below:

Rémy Voisin Starns
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